

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(i) The Meaning of 'Food'/201. The meaning of 'food'.

FOOD (

1. INTRODUCTION

(1) CONTROL BY STATUTE

(i) The Meaning of 'Food'

201. The meaning of 'food'.

For the purposes of the Food and Environment Protection Act 1985, the Food Safety Act 1990 and the Food Standards Act 1999¹, 'food' is not exhaustively defined, but includes: (1) drink²; (2) articles³ and substances⁴ of no nutritional value which are used for human consumption⁵; (3) chewing gum and other products of a like nature and use⁶; and (4) articles and substances used as ingredients in the preparation of food or anything falling within this provision⁷.

'Food' does not include: (a) live animals or birds, or live fish which are not used for human consumption while they are alive⁸; (b) fodder or feeding stuffs for animals, birds or fish⁹; (c) controlled drugs within the meaning of the Misuse of Drugs Act 1971¹⁰; or (d) subject to such exceptions as may be specified in an order made by the Secretary of State¹¹ (i) medicinal products within the meaning of the Medicines Act 1968¹² in respect of which product licences within the meaning of that Act are for the time being in force¹³; or (ii) other articles or substances in respect of which such licences are for the time being in force in pursuance of orders¹⁴.

'Water' is excluded from the definition of 'food', and the provisions of Part II of the Food Safety Act 1990¹⁵ or any regulations or order made under it do not apply in relation to the supply of water to any premises¹⁶.

'Food source' means any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise)¹⁷.

1 The definition of 'food' in the Food Safety Act 1990 (see the text and notes infra) is applied to the Food and Environment Protection Act 1985 (s 24(1)) and to the Food Standards Act 1999 (s 36(4)).

2 Food Safety Act 1990 s 1(1)(a).

3 'Article' does not include a live animal or bird, or a live fish which is not used for human consumption while it is alive: *ibid* s 53(1). 'Animal' means any creature other than a bird or fish: s 53(1). 'Fish' includes crustaceans and molluscs: s 53(1). 'Human consumption' includes use in the preparation of food for human consumption: s 53(1). For the purposes of Pt II (ss 7-26) (as amended), any part of, or product derived wholly or partly from, an animal which has been slaughtered in a knacker's yard, or of which the carcase has been brought into a knacker's yard is deemed to be unfit for human consumption: s 8(4). 'Knacker's yard' means any premises used in connection with the business of slaughtering, flaying or cutting up animals the flesh of which is not intended for human consumption: s 53(1). 'Preparation', in relation to food, includes manufacture and any form of processing or treatment: s 53(1). 'Treatment', in relation to any food, includes subjecting it to heat or cold: s 53(1). For the meaning of 'premises' see PARA 204 note 16 post. 'Business' includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a public or local authority: s 1(3).

- 4 'Substance' includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour: *ibid* s 53(1).
- 5 *Ibid* s 1(1)(b).
- 6 *Ibid* s 1(1)(c).
- 7 *Ibid* s 1(1)(d). The provision referred to in the text is s 1(1).
- 8 *Ibid* s 1(2)(a).
- 9 *Ibid* s 1(2)(b).
- 10 *Ibid* s 1(2)(c). See MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 237 et seq.
- 11 *Ibid* s 1(2)(d) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8).
- 12 See MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 7.
- 13 Food Safety Act 1990 s 1(2)(d)(i). Section 1(2)(d)(i) has effect as if the reference to medicinal products within the meaning of the Medicines Act 1968 in respect of which product licences within the meaning of that Act are for the time being in force, included a reference to relevant medicinal products in respect of which United Kingdom marketing authorizations under the Medicines for Human Use (Marketing Authorisations etc) Regulations 1994, SI 1994/3144 (as amended), or Community marketing authorizations are for the time being in force: see reg 9(14).
- 14 Food Safety Act 1990 s 1(2)(d). The text refers to orders under the Medicines Act 1968 s 104 or s 105 (application of Act to other articles and substances) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 9): see the Food Safety Act 1990 s 1(2)(d) (as so amended).
- 15 *Ibid* Pt II (ss 7-26) (as amended): see PARA 282 et seq post.
- 16 *Ibid* s 55(1). The text refers to the supply of water to any premises, whether by a water undertaker or by means of a private supply (within the meaning of the Water Industry Act 1991 Pt III (ss 37-93) (as amended) (see WATER AND WATERWAYS)): see the Food Safety Act 1990 s 55(1).
- 17 *Ibid* s 1(3).

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201-204 The meaning of 'food' ... Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

201 The meaning of 'food'

TEXT AND NOTES--Food Safety Act 1990 s 1 amended: SI 2004/2990.

NOTE 13--As to SI 1994/3144 see further MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 20 et seq.

TEXT AND NOTE 16--1990 Act s 55 substituted: SI 2005/2035.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(ii) Food Legislation/202. History and development of the food legislation.

(ii) Food Legislation

202. History and development of the food legislation.

The law relating to food¹ and drugs developed from the prescriptions of the mediaeval guilds to maintain the purity of the commodities in which their members dealt, and from early statutes which dealt only with specific foodstuffs and not with general principles².

The first Act to deal generally with the sale of food and drugs in a pure state was the Adulteration of Food or Drink Act 1860 which made it an offence knowingly to sell food containing an injurious ingredient or material and to sell food which was adulterated or not pure³. These provisions were extended to drugs by the Pharmacy Act 1868⁴. Enforcement defects were partially dealt with by the Adulteration of Food and Drugs Act 1872⁵, but these statutes were replaced by the first effective statute, the Sale of Food and Drugs Act 1875⁶, which was followed by ad hoc legislation dealing with such matters as the composition and labelling of margarine, milk, butter and other dairy products, the addition of preservatives to food and the labelling of imported meat. The first consolidating statute was the Food and Drugs (Adulteration) Act 1928⁷.

The second consolidation, which also contained amendments, was the Food and Drugs Act 1938⁸. This Act was followed by the Defence (Sale of Food) Regulations 1943⁹ which replaced and extended the provisions relating to the labelling and advertising of food, the Food and Drugs (Milk and Dairies) Act 1944, and the Milk (Special Designations) Act 1949, which were both brought into force on 1 October 1949¹⁰. These were followed by a consolidation of certain enactments relating to milk, dairies and artificial cream by the Food and Drugs (Milk, Dairies and Artificial Cream) Act 1950, which came into force on 1 January 1951¹¹.

As from 1 January 1956 the law was governed by the Food and Drugs Act 1955¹². In relation to food only, this statute was replaced by the Food Act 1984¹³.

Today the law is largely contained in three statutes: the Food and Environment Protection Act 1985, the Food Safety Act 1990 and the Food Standards Act 1999. The Food and Environment Protection Act 1985 makes provision in relation to the contamination of food¹⁴. The Food Safety Act 1990¹⁵ makes new provision in place of the Food Act 1984, except in relation to markets¹⁶, sugar beet¹⁷, administration, enforcement and legal proceedings relating to the Food Act 1984¹⁸ and compulsory purchase of land¹⁹. The Food Standards Act 1999 provides for the establishment, functions and powers of the Food Standards Agency²⁰.

1 For the meaning of 'food' see PARA 201 post.

2 See eg 51 Hen 3 Stat 1 (Assize of Bread and Ale) (1266); the Adulteration of Tea and Coffee Act 1724; the Adulteration of Tea Act 1730; the Adulteration of Tea Act 1776; the Bread Act 1822; and the Bread Act 1836. Unless specifically stated, all the Acts prior to 1956 mentioned in this paragraph have been repealed or are obsolete.

3 See the Adulteration of Food or Drink Act 1860 (repealed).

4 See the Pharmacy Act 1868 (repealed).

5 See the Adulteration of Food and Drugs Act 1872 (repealed).

6 Sale of Food and Drugs Act 1875 (repealed).

- 7 See the Food and Drugs (Adulteration) Act 1928 (repealed) which was purely a consolidating Act; the long title described it as 'an Act to consolidate the Sale of Food and Drugs Acts'.
- 8 See the Food and Drugs Act 1938 (repealed) which came into force on 1 October 1939.
- 9 Defence (Sale of Food) Regulations 1943, SR & O 1943/1553 (revoked).
- 10 Food and Drugs (Milk and Dairies) Act 1944 (Appointed Day) Order 1949, SI 1949/1587 (now lapsed); Milk (Special Designations) Act 1949 s 16(2) (repealed).
- 11 Food and Drugs (Milk, Dairies and Artificial Cream) Act 1950 s 38(2) (repealed).
- 12 Food and Drugs Act 1955 (repealed).
- 13 Food Act 1984 (repealed in part).
- 14 See the Food and Environment Protection Act 1985 Pt I (ss 1-4); and PARAS 316-317 post.
- 15 See the Food Safety Act 1990; and PARA 201 ante, PARA 203 et seq post. 'Food safety legislation' means the Food Safety Act 1990 and any regulations and orders made under it and any corresponding provisions in Northern Ireland: s 58(4).
- 16 See the Food Act 1984 Pt III (ss 50-61) (as amended); and MARKETS, FAIRS AND STREET TRADING.
- 17 See ibid Pt V (ss 68-69A) (as amended); and TRADE AND INDUSTRY vol 97 (2010) PARA 841.
- 18 See ibid Pt VI (ss 93-95) (all amended by the Food Safety Act 1990 s 59(4) Sch 5).
- 19 See ibid s 110; and PARA 259 post.
- 20 See the Food Standards Act 1999; and PARA 225 et seq post. As to the establishment of the Food Standards Agency see PARA 225 post.

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201-204 The meaning of 'food' ... Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(ii) Food Legislation/203. Influence of European legislation.

203. Influence of European legislation.

European Union law now dictates the majority of English food law, including the labelling of food¹, the composition of food², novel foods³, dietary foods⁴ and additives in foods⁵. The EC Council and EC Commission regulations relating to food, if they are sufficiently precise, have direct effect⁶ in each member state⁷. Such regulations form part of the law of England and Wales and as such require no implementing legislation. However, domestic subordinate legislation⁸ may provide for the enforcement and execution of the law, for example by creating offences⁹. A large proportion of European food law is in the form of European Directives which do not have direct effect and are therefore implemented in England and Wales by regulations made by the Secretary of State¹⁰.

1 See PARAS 371-423 post.

2 See PARAS 359-370 post.

3 See PARAS 349-358 post.

4 See PARA 445 post.

5 See PARAS 366-370 post.

6 As to the principle of direct effect see EUROPEAN COMMUNITIES.

7 At the date at which this volume states the law, the current member states of the European Union are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom.

8 Ie made under the European Communities Act 1972 s 2 (as amended); and the Food Safety Act 1990 s 17(2) (as amended): see PARA 215 post.

9 See PARAS 215-221 post.

10 Ie under the Food Safety Act 1990 s 17(1) (as amended): see PARA 215 post. As to the Secretary of State see PARA 224 post.

UPDATE

201-204 The meaning of 'food' ... Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(ii) Food Legislation/204. Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown.

204. Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown.

The provisions of the Food Safety Act 1990 and of regulations and orders made under it bind the Crown¹. No contravention² by the Crown of any provision of the Act or of any regulations or order made under it may make the Crown criminally liable; but the High Court may, on the application of an enforcement authority³, declare unlawful any act or omission of the Crown which constitutes such a contravention⁴. The provisions of the Act and of regulations and orders made under it apply to persons in the public service of the Crown as they apply to other persons⁵. If the Secretary of State⁶ certifies that it appears to him requisite or expedient in the interests of national security that certain powers of entry conferred by the Act⁷ should not be exercisable in relation to any Crown premises⁸ specified in the certificate, those powers may not be exercisable in relation to those premises⁹. However, these provisions¹⁰ do not affect Her Majesty in her private capacity¹¹.

The Food Standards Act 1999 binds the Crown, but similarly does not affect Her Majesty in her private capacity¹². This does not require subordinate legislation made under the Food Standards Act 1999 to bind the Crown¹³. If the Secretary of State certifies that it appears to him requisite or expedient in the interests of national security that the powers of entry conferred for persons carrying out observations¹⁴ and for persons monitoring enforcement action¹⁵ should not be exercisable in relation to any premises¹⁶ specified in the certificate, being premises held or used by or on behalf of the Crown, those powers may not be exercisable in relation to those premises¹⁷.

1 Food Safety Act 1990 s 54(1), which is expressed to be subject to s 54(2)-(5) (see the text and notes 4-11 *infra*).

2 'Contravention', in relation to any provision, includes any failure to comply with that provision: *ibid* s 53(1).

3 For the meaning of 'enforcement authority' see PARA 222 *ante*.

4 Food Safety Act 1990 s 54(2).

5 *Ibid* s 54(3), which is expressed to be notwithstanding anything in s 54(2) (see the text to note 3 *supra*).

6 As to the Secretary of State see PARA 224 *post*.

7 *Ie* conferred by the Food Safety Act 1990 s 32: see PARA 261 *post*.

8 'Crown premises' means premises held or used by or on behalf of the Crown: *ibid* s 54(4).

9 *Ibid* s 54(4).

10 *Ie* *ibid* s 54: see the text and notes 1-9 *supra*, 11 *infra*.

11 *Ibid* s 54(5). Section 54(5) must be interpreted as if the Crown Proceedings Act 1947 s 38(3) (references to Her Majesty in her private capacity) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103) were contained in the Food Safety Act 1990: s 54(5).

12 Food Standards Act 1999 s 38(1). Section 38(1) must be interpreted as if the Crown Proceedings Act 1947 s 38(3) (references to Her Majesty in her private capacity) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103) were contained in the Food Standards Act 1999: s 38(2)(b).

13 *Ibid* s 38(2)(a).

14 le conferred by ibid s 11: see PARA 242 post.

15 le conferred by ibid s 14: see PARA 245 post.

16 'Premises' includes any place, any vehicle, stall or moveable structure and, for such purposes as may be specified in an order made by the Secretary of State, any ship or aircraft of a description so specified: Food Safety Act 1990 s 1(3); definition applied by the Food Standards Act 1999 s 36(4). The purposes which may be so specified in an order under the Food Safety Act 1990 s 1(3), or under the corresponding provision of the Food Safety (Northern Ireland) Order 1991, SI 1991/672 (NI 7), art 2(2), include purposes relating to provisions of the Food Standards Act 1999: s 36(5). 'Ship' includes any vessel, boat or craft, and a hovercraft within the meaning of the Hovercraft Act 1968 s 4 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381), and 'master' is to be construed accordingly: Food Safety Act 1990 s 53(1); definition applied by the Food Standards Act 1999 s 36(4).

17 Ibid s 38(3).

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201-204 The meaning of 'food' ... Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

204 Application of the Food Safety Act 1990 and the Food Standards Act 1999 to the Crown

NOTE 16--As to the purposes for which ships and aircraft are 'premises', see the Food Safety (Ships and Aircraft) (Wales) Order 2003, SI 2003/1774 (amended by SI 2005/3292); the Food Safety (Ships and Aircraft) (England and Scotland) Order 2003, SI 2003/1895 (amended by SI 2005/2059).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(ii) Food Legislation/205. Application of the Food Safety Act 1990 to the Scilly Isles and the Channel Islands.

205. Application of the Food Safety Act 1990 to the Scilly Isles and the Channel Islands.

Her Majesty may by Order in Council¹ direct that any of the provisions of the Food Safety Act 1990 are to extend to any of the Channel Islands with such exceptions and modifications (if any) as may be specified in the Order².

1 At the date at which this volume states the law, no such orders had been made.

2 Food Safety Act 1990 s 57(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(ii) Food Legislation/206. Application of the Food Safety Act 1990 to territorial waters and the continental shelf.

206. Application of the Food Safety Act 1990 to territorial waters and the continental shelf.

For the purposes of the Food Safety Act 1990 the territorial waters of the United Kingdom¹ adjacent to any part of Great Britain are to be treated as situated in that part².

An Order in Council, under the Petroleum Act 1998³, may make provision for treating for the purposes of food safety legislation⁴: (1) any installation⁵ which is in waters to which that provision applies; and (2) any safety zone⁶ around any such installation, as if they were situated in a specified⁷ part of the United Kingdom and for modifying such legislation in its application to such installations and safety zones⁸. Such an Order in Council may also confer on persons of a specified description the right to require, for the purpose of facilitating the exercise of specified powers under food safety legislation: (a) conveyance to and from any installation, including conveyance of any equipment⁹ required by them¹⁰; and (b) the provision of reasonable accommodation and means of subsistence while they are on any installation¹¹.

1 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. As to the extent of the territorial waters (or sea) of the United Kingdom see the Territorial Sea Act 1987 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 124.

2 Food Safety Act 1990 s 58(1).

3 See under the Petroleum Act 1998 s 11: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1679. The Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197 has effect as if made under the Petroleum Act 1998 s 11: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1679.

4 For the meaning of 'food safety legislation' see PARA 202 note 15 ante.

5 'Installation' means an installation to which the Petroleum Act 1998 s 11(3) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1679) applies: Food Safety Act 1990 s 58(4) (amended by the Petroleum Act 1998 s 50, Sch 4 para 28(b)).

6 'Safety zone' means an area which is a safety zone by virtue of the Petroleum Act 1987 Pt III (ss 21-28) (as amended) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1680): Food Safety Act 1990 s 58(4).

7 'Specified' means specified in the Order in Council: Food Safety Act 1990 s 58(4).

8 Ibid s 58(2) (amended by the Petroleum Act 1998 Sch 4 para 28(a)).

9 'Equipment' includes any apparatus: Food Safety Act 1990 s 53(1).

10 Ibid s 58(3)(a).

11 Ibid s 58(3)(b).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/207. Slaughterhouses and slaughter of animals legislation.

(iii) Food Related Legislation

207. Slaughterhouses and slaughter of animals legislation.

A system of licensing of private slaughterhouses and knackers' yards was established by the Food and Drugs Act 1938, and local authorities were empowered to make byelaws for regulating their management and to provide public slaughterhouses with a view ultimately to the elimination of private slaughterhouses¹. These provisions did not extend to the administrative county of London², where a system of licensing had been established under other legislation³. Further legislation for restricting private slaughterhouses and extending the functions of local authorities as regards slaughterhouses was enacted in 1954 and in 1958⁴; and the enactments applying outside the then administrative county of London were consolidated in the Food and Drugs Act 1955⁵. These enactments were repealed and consolidated in the Slaughterhouses Act 1974, where the present provisions are found⁶.

Other statutes regulate the humane and scientific slaughter of animals⁷.

1 Food and Drugs Act 1938 ss 57-61 (repealed).

2 Ibid s 103(2) (repealed). The definition of 'London' was contained in s 100(1) (repealed). Section 103(2) also did not extend to certain premises of the Port of London Authority and of the Mersey Docks and Harbour Board: see s 63 (repealed). As to the Port of London Authority see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARAS 623-627.

3 Public Health (London) Act 1936 s 144 (slaughterhouses), s 145 (licensing of premises for receiving horses for slaughter) (both repealed). The Slaughterhouses Act 1974 applies both in and outside Greater London: see PARA 474 post.

4 Slaughterhouses Act 1954 Pt I (ss 1-6) (repealed); Food and Drugs Amendment Act 1954 s 28 (which was deemed always to have had effect), s 36, Sch 3 (repealed); Slaughterhouses Act 1958 (repealed).

5 Food and Drugs Act 1955 ss 62-79, 81 (repealed).

6 See the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended), which came into force on 1 April 1974: see s 48(2). The Act contains provisions: (1) for the licensing of private slaughterhouses and knackers' yards (see ss 1-10 (as amended); and PARAS 478-485 post); (2) for the regulation of private slaughterhouses and knackers' yards (see ss 11-13 (as amended); and PARA 484 post); (3) for the restriction of private slaughterhouses (see s 14 (as amended); and PARA 473 post); (4) for the provision and management of public slaughterhouses (see ss 15-18 (as amended); and PARAS 474-477 post); (5) for enforcement and legal proceedings (see ss 19-26 (as amended); and PARA 484 post); and (6) for miscellaneous and supplemental matters (see ss 27-35 (as amended); and PARA 474 post).

7 The present provisions, relating to the slaughter of horses, cattle, sheep, swine and goats, are contained in ibid Pt II (ss 36-45) (as amended) (see PARA 484 post), which replaced the Slaughter of Animals Act 1958 (repealed).

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207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/208. Weights and measures legislation.

208. Weights and measures legislation.

The sale of food by weight, measure or number is the subject of legislation different from that concerned with its composition, labelling and advertising. The sale of food by quantity is controlled by the Weights and Measures Act 1985¹. This Act makes provision for units and standards of measurement², weighing and measuring for trade³, public weighing and measuring equipment⁴, regulation of transactions in goods⁵, packaged goods⁶, administration⁷, enforcement and legal proceedings and other miscellaneous provisions⁸. A number of special rules as to the sale of particular foods are applied by the Act, including rules as to the quantities in which foods can be sold or pre-packed and as to the marking of quantity on pre-packed food⁹.

1 See generally WEIGHTS AND MEASURES.

2 See the Weights and Measures Act 1985 Pt I (ss 1-6) (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARAS 16-17, 39, 58-65.

3 See *ibid* Pt II (ss 7-17) (as amended); and WEIGHTS AND MEASURES.

4 See *ibid* Pt III (ss 18-20); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARAS 100-102.

5 See *ibid* Pt IV (ss 21-46) (as amended); and WEIGHTS AND MEASURES.

6 See *ibid* Pt V (ss 47-68) (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 206 et seq.

7 See *ibid* Pt VI (ss 69-78) (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20 et seq.

8 See *ibid* Pt VII (ss 79-99) (as amended); and WEIGHTS AND MEASURES.

9 See WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARAS 126-158.

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207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/209. Prices.

209. Prices.

The marking of prices at which food is offered for sale is governed by legislation of applicability to goods sold to consumers generally¹.

The Price Marking Order 1999² provides that a unit price, that is to say a price expressed by reference to a unit of measurement, is to be indicated in respect of many foods³.

The use of misleading prices in relation to the sale of food is governed by the general prohibition in relation to the sale of goods: it is an offence in the course of any business to give consumers an indication which is misleading as to the price at which any goods, including food, are available⁴.

1 See the Prices Act 1974; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 681, 698-699.

2 See the Price Marking Order 1999, SI 1999/3042.

3 See *ibid* art 5.

4 See the Consumer Protection Act 1987 Pt III (ss 20-26) (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 702 et seq.

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207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

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209 Prices

NOTE 2--SI 1999/3042 replaced: Price Marking Order 2004, SI 2004/102 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 682 et seq).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/210. Legislation relating to the sale and supply of intoxicating liquor.

210. Legislation relating to the sale and supply of intoxicating liquor.

The sale by retail of intoxicating liquor¹ by any person is illegal without holding a justices' licence² authorising the sale of the liquor at the place where it is sold³. The sale or supply of intoxicating liquor is also illegal, in general, if it takes place outside the permitted hours⁴.

1 For the meaning of 'intoxicating liquor' see LICENSING AND GAMBLING.

2 As to justices' licences see LICENSING AND GAMBLING.

3 See the Licensing Act 1964 s 160 (as amended); and LICENSING AND GAMBLING.

4 See *ibid* s 59 (as amended); and LICENSING AND GAMBLING.

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207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/211. Trade descriptions legislation.

211. Trade descriptions legislation.

Food and growing crops are included in goods to which the Trade Descriptions Act 1968 applies¹, and accordingly the offences created by that Act are applicable to them. Under the Act it is an offence, in the course of a trade or business², to apply³ a false trade description⁴ to any goods⁵, or to supply or offer to supply⁶ any goods to which a false trade description is applied⁷. However, where provision is made under the Food Safety Act 1990 prohibiting the application of a description except to goods in the case of which the requirements specified in that provision are complied with, that description, when applied to such goods, is deemed not to be a trade description⁸.

1 See the Trade Descriptions Act 1968 s 39(1); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 485.

2 For the meaning of 'trade or business' see *Re A Debtor (No 3 of 1926)* [1927] 1 Ch 97, CA; *Re A Debtor (No 490 of 1935)* [1936] Ch 237, CA; *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v Williams* [1953] Ch 138, [1953] 1 All ER 536; and cf *Stuchbery v General Accident Fire and Life Assurance Corp Ltd* [1949] 2 KB 256, [1949] 1 All ER 1026, CA.

3 A person 'applies' a trade description to goods if he: (1) affixes or annexes it to or in any manner marks it on or incorporates it with the goods themselves, or anything in, on or with which the goods are supplied; or (2) places the goods in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or (3) uses the trade description in any manner likely to be taken as referring to the goods: Trade Descriptions Act 1968 s 4(1). An oral statement may amount to the use of a trade description: s 4(2). As to where goods are supplied in pursuance of a request see s 4(3); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 478.

4 A 'trade description' is an indication, direct or indirect, and by whatever means given of any of the following matters with respect to any goods or parts of goods, that is to say: (1) quantity, size or gauge; (2) method of manufacture, production, processing or reconditioning; (3) composition; (4) fitness for purpose, strength, performance, behaviour or accuracy; (5) any physical characteristics not included in heads (1)-(4) supra; (6) testing by any person and results thereof; (7) approval by any person or conformity with a type approved by any person; (8) place or date of manufacture, production, processing or reconditioning; (9) person by whom manufactured, produced, processed or reconditioned; (10) other history, including previous ownership or use: *ibid* s 2(1); and see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 481. A 'false trade description' is a trade description which is false to a material degree: s 3(1).

5 *Ibid* s 1(1)(a). See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 475.

6 A person exposing goods for supply or having goods in his possession for supply is deemed to offer to supply them: *ibid* s 6.

7 *Ibid* s 1(1)(b). See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 475.

8 See *ibid* s 2(5)(a) (amended by the Medicines Act 1968 s 135(1), Sch 5 para 16; and the Food Safety Act 1990 s 59(1), Sch 3 para 6).

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207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

211 Trade descriptions legislation

TEXT AND NOTES 1-7--Trade Descriptions Act 1968 ss 1(1), 6 repealed: SI 2008/1277. Provision is made for the prohibition of unfair commercial practices: see the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 725A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/212. Legislation relating to liability for defective products.

212. Legislation relating to liability for defective products.

Where any damage is caused wholly or partly by a defect in a product the following persons are liable for the damage: (1) the producer of the product; (2) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and (3) any person who has imported the product into a member state from a place outside the member states in order, in the course of any business of his, to supply it to another¹. This principle applies to food as much as to other products, but does not apply to a person in respect of any defect in any game or agricultural produce if the only supply of the game or produce by that person to another was at a time when it had not undergone an industrial process². There is a defect in a product³ if the safety of the product is not such as persons generally are entitled to expect, and in determining this, all the circumstances are to be taken into account including the manner of marketing, the get up, any instructions or warning, what might reasonably be expected to be done with or in relation to the product, and the time when the product was supplied by its producer⁴.

There are a number of defences available to the person proceeded against⁵, the most important of which are that the defect did not exist in the product at the relevant time⁶, or that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control⁷.

Enforcement authorities have powers in relation to unsafe goods⁸. The Secretary of State⁹ may serve a prohibition notice prohibiting a person from supplying unsafe goods, or he may serve a notice to warn requiring a person to publish warnings about unsafe goods¹⁰. An enforcement authority which has reasonable grounds for suspecting that any safety provision has been contravened in relation to any goods, may serve a suspension notice prohibiting the person on whom it is served, for a period of not more than six months, from supplying those goods¹¹. An enforcement authority may also apply for a forfeiture order in relation to such goods¹². The Secretary of State has power to serve a notice requiring information to be supplied so as to enable him to exercise his powers under Part II¹³ of the Consumer Protection Act 1987¹⁴. These powers overlap to a substantial degree with powers relating to food under the Food Safety Act 1990¹⁵.

The General Product Safety Regulations 1994¹⁶ provide that no producer may place a product on the market unless the product is a safe product¹⁷, and this includes food products. A 'safe product' means any product which under normal or reasonably foreseeable conditions of use does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with the high level of protection for the safety and health of persons¹⁸. Breach of this obligation is an offence¹⁹. In assessing safety, account has to be taken of the characteristics of the product, the product's effect on other products with which it is reasonably foreseeable that it will be used, the presentation, labelling and instructions relating to the product, and the categories of consumers at serious risk when using the product²⁰.

Further specific offences in relation to food are created by the Food Safety Act 1990²¹.

¹ See the Consumer Protection Act 1987 s 2(1), (2); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 521.

- 2 See *ibid* s 2(4); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 521.
- 3 *Ie* for the purposes of *ibid* Pt I (ss 1-9).
- 4 See *ibid* s 3; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 522.
- 5 As to the defences see *ibid* s 4; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 524.
- 6 See *ibid* s 4(1)(d).
- 7 See *ibid* s 4(1)(e).
- 8 See *ibid* Pt II (ss 10-19) (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 528 et seq. For the meaning of 'enforcement authority' see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549.
- 9 As to the Secretary of State see PARA 224 post.
- 10 See Consumer Protection Act 1987 s 13; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 544.
- 11 See *ibid* s 14; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549.
- 12 See *ibid* s 16; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 553.
- 13 *Ie* *ibid* Pt II (ss 10-19) (as amended).
- 14 See *ibid* s 18; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 554.
- 15 See PARAS 284-288 post.
- 16 *Ie* the General Product Safety Regulations 1994, SI 1994/2328: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 565 et seq.
- 17 See *ibid* reg 7; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 566.
- 18 See *ibid* reg 2(1); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 566.
- 19 See *ibid* reg 12; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 566.
- 20 See note 18 *supra*.
- 21 See PARAS 282-283 post.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/213. Legislation relating to the infestation of premises and equipment.

213. Legislation relating to the infestation of premises and equipment.

Persons whose business includes the manufacture, storage, transport or sale of foods are under statutory obligation to give notice to the Minister of Agriculture, Fisheries and Food¹ concerning the occurrence of infestation in the premises or equipment likely to be used in the manufacture, storage or sale of food or in the food or goods likely to be in contact with it². The Minister is empowered to give directions to such persons with a view to preventing or mitigating infestation³.

The statutory provisions for the prevention and eradication of diseases of animals, including the slaughter of animals and the disposal of carcasses, are discussed elsewhere in this work⁴.

1 As to the Minister of Agriculture, Fisheries and Food see PARA 224 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

2 See the Prevention of Damage by Pests Act 1949 s 13; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARAS 877-879.

3 See *ibid* s 14; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 880.

4 See ANIMALS vol 2 (2008) PARAS 1043 et seq (eradication and prevention of disease), 1092, 1108 (compensation for slaughter), 1094 (disposal of carcasses).

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) CONTROL BY STATUTE/(iii) Food Related Legislation/214. Emergency powers legislation.

214. Emergency powers legislation.

If action likely to interfere with the supply and distribution of food on a scale calculated to deprive a substantial portion of the community of the essentials of life is taken or immediately threatened¹, Her Majesty may declare by proclamation that a state of emergency exists, and may make appropriate regulations for securing and regulating the supply and distribution of food².

1 See the Emergency Powers Act 1920 s 1 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 822.

2 See *ibid* s 2 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 822.

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

214 Emergency powers legislation

TEXT AND NOTES--1920 Act replaced by Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 822A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) CONTROL BY SUBORDINATE LEGISLATION/215. Enforcement of European Community provisions by regulations.

(2) CONTROL BY SUBORDINATE LEGISLATION

215. Enforcement of European Community provisions by regulations.

The Secretary of State¹ may by regulations make such provision with respect to food², food sources³ or contact materials⁴, including in particular provision for prohibiting or regulating the carrying out of commercial operations⁵ with respect to food, food sources or contact materials, as appears to him to be called for by any European Community obligation⁶. As respects any directly applicable Community provision⁷ which relates to food, food sources or contact materials and for which, in his opinion, it is appropriate to provide under the Food Safety Act 1990, the Secretary of State may by regulations: (1) make such provision as he considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under the Food Safety Act 1990; and (2) apply such of the provisions of the Food Safety Act 1990 as may be specified in the regulations in relation to the Community provision with such modifications, if any, as may be so specified⁸.

1 As to the Secretary of State see PARA 224 post.

2 For the meaning of 'food' see PARA 201 ante. References to food are to be construed as references to food intended for sale for human consumption: Food Safety Act 1990 s 16(5)(a); applied by s 17(3).

3 For the meaning of 'food source' see PARA 201 ante. References to food sources are to be construed as references to food sources from which such food is intended to be derived: *ibid* s 16(5)(b); applied by s 17(3).

4 For the meaning of 'contact material' see PARA 241 note 11 ante.

5 For the meaning of 'commercial operation' see PARA 241 note 11 ante.

6 Food Safety Act 1990 s 17(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 12(a)). 'Community obligation' means any obligation created or arising by or under the Treaties, whether an enforceable Community obligation or not: European Communities Act 1972 s 1, Sch 1 Pt II; Interpretation Act 1978 s 5, Sch 1.

7 'Directly applicable Community provision' is not defined for the purposes of the Food Safety Act 1990.

8 *Ibid* s 17(2) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8, 12(b)). Numerous regulations have been made in exercise of the power under the Food Safety Act 1990 s 17 (as amended) and are set out elsewhere in this title.

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) CONTROL BY SUBORDINATE LEGISLATION/216. Power to make regulations under the Food Safety Act 1990.

216. Power to make regulations under the Food Safety Act 1990.

The Food Safety Act 1990 contains a number of provisions, including transitional and saving provisions, for the making of subordinate legislation, to provide the details of the control imposed by the Act itself, and also for administrative matters. The powers of making regulations and orders are conferred on the Secretary of State¹.

Any power of the Secretary of State to make regulations or an order under the Food Safety Act 1990 includes power²: (1) to apply, with modifications and adaptations, any other enactment (including one contained in the Act) which deals with matters similar to those being dealt with by the regulations or order³; (2) to make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business)⁴; and (3) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as the Secretary of State considers necessary or expedient⁵. Any power of the Secretary of State to make regulations or orders under the Act is exercisable by statutory instrument⁶, and any statutory instrument containing regulations under the Act, or an order under the Act⁷, is subject to annulment in pursuance of a resolution of either House of Parliament⁸.

Before making: (a) any regulations under the Act, other than regulations for the enforcement of European Community provisions⁹ or regulations prohibiting the importation of any food of a specified class¹⁰; or (b) any order under Part I of the Food Safety Act 1990¹¹, the Secretary of State must consult with such organisations as appear to him to be representative of interests likely to be substantially affected by the regulations or order¹². If it appears to the Secretary of State that the Food Standards Agency has undertaken any consultation with an organisation that he is required to consult¹³, the Secretary of State may treat that consultation as being as effective for those purposes as if undertaken by him¹⁴. Before making any regulations or order the Secretary of State must have regard to any relevant advice given by the Agency¹⁵.

Regulations under Part II of the Food Safety Act 1990¹⁶ may: (i) require persons carrying on any activity to which the regulations apply to keep and produce records and provide returns¹⁷; (ii) prescribe the particulars to be entered on any register required to be kept in accordance with the regulations¹⁸; (iii) require any such register to be open to inspection by the public at all reasonable times and, subject to that, authorise it to be kept by means of a computer¹⁹; (iv) prescribe the periods for which and the conditions subject to which licences may be issued, and provide for the subsequent alteration of conditions and for the cancellation, suspension or revocation of licences²⁰; (v) provide for an appeal to a magistrates' court or to a tribunal constituted in accordance with the regulations²¹, against any decision of an enforcement authority²², or of an authorised officer²³ of such an authority²⁴; and (vi) provide, as respects any appeal to such a tribunal, for the procedure on the appeal (including costs) and for any appeal against the tribunal's decision²⁵.

Regulations under Part II may: (A) provide that an offence under the regulations is to be triable in a specified way; and (B) include provisions under which a person guilty of such an offence is liable to such penalties (not exceeding those which may be imposed in respect of offences under the Food Safety Act 1990) as may be specified in the regulations²⁶.

1 As to the Secretary of State see PARA 224 post.

- 2 Food Safety Act 1990 s 48(1) (s 48(1), (2), (4) amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8).
- 3 Food Safety Act 1990 s 48(1)(a).
- 4 Ibid s 48(1)(b).
- 5 Ibid s 48(1)(c) (as amended: see note 2 supra).
- 6 Ibid s 48(2) (as amended: see note 2 supra).
- 7 Ie other than an order under ibid s 60(3).
- 8 Ibid s 48(3).
- 9 Ie under ibid s 17(2) (as amended): see PARA 215 ante.
- 10 Ie under ibid s 18(1)(c) (as amended): see PARA 350 post.
- 11 Ie ibid Pt I (ss 1-6) (as amended): see PARAS 201 ante, 251-253, 262, 282 post.
- 12 Ibid s 48(4) (as amended: see note 2 supra). Any consultation undertaken before the commencement of s 48(4) (as amended) is as effective, for the purposes of s 48(4) (as amended), as if undertaken after that commencement: s 48(5).
- 13 Ie under ibid s 48(4) (as amended): see the text to note 12 supra. As to the establishment of the Food Standards Agency see PARA 225 post.
- 14 Ibid s 48(4B) (s 48(4A), (4B) added by the Food Standards Act 1999 Sch 5 para 21).
- 15 Food Safety Act 1990 s 48(4A) (as added: see note 14 supra).
- 16 Ie under ibid Pt II (ss 7-26) (as amended).
- 17 Ibid s 26(2)(a).
- 18 Ibid s 26(2)(b).
- 19 Ibid s 26(2)(c).
- 20 Ibid s 26(2)(d).
- 21 There may be paid out of money provided by Parliament to the chairman of any tribunal constituted in accordance with regulations under the Food Safety Act 1990 such remuneration (by way of salary or fees) and such allowances as the Secretary of State may with the approval of the Treasury determine: s 47 (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 22 For the meaning of 'enforcement authority' see PARA 222 ante.
- 23 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante.
- 24 Food Safety Act 1990 s 26(2)(e).
- 25 Ibid s 26(2)(f). In exercise of this power, the Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921 (as amended) have been made: see PARA 339 post.
- 26 Food Safety Act 1990 s 26(3) (amended by the Food Standards Act 1999 s 40(4), Sch 6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

216 Power to make regulations under the Food Safety Act 1990

NOTES 9-15--Food Safety Act 1990 s 48(4) amended: Food Safety Act 1990 (Amendment) Regulations 2004, SI 2004/2990.

NOTE 25--SI 1992/2921 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) CONTROL BY SUBORDINATE LEGISLATION/217. Purposes for which regulations may be made under the Food Safety Act 1990.

217. Purposes for which regulations may be made under the Food Safety Act 1990.

The Secretary of State¹ has power to make subordinate legislation for the following purposes:

- 1 (1) to provide exemptions from the definition of 'food'²;
- 2 (2) to extend the definition of 'premises' to any ship or aircraft³;
- 3 (3) to extend the meaning of 'sale'⁴;
- 4 (4) to provide that functions under the Food Safety Act 1990 are to be exercised by a particular food authority⁵;
- 5 (5) to prescribe qualifications for authorised officers⁶;
- 6 (6) to specify the authorities that are to enforce and execute regulations⁷;
- 7 (7) to issue emergency control orders⁸;
- 8 (8) to make regulations about food safety and consumer protection in relation to food⁹;
- 9 (9) to make regulations so as to enforce the law of the European Union¹⁰;
- 10 (10) to make regulations in relation to novel foods¹¹;
- 11 (11) to make regulations about licensing of producers and sellers of milk and the special designations of milk¹²;
- 12 (12) to make regulations about the registration or licensing of food premises¹³;
- 13 (13) to prohibit or regulate commercial operations with respect to food, food sources or contact materials¹⁴;
- 14 (14) to require records to be kept and to lay down the conditions subject to which licences may be issued and to provide for appeals¹⁵;
- 15 (15) to provide for the qualifications of public analysts¹⁶;
- 16 (16) to make regulations with regard to direct engagement between a public analyst and a food business¹⁷;
- 17 (17) to provide for qualifications for a food examiner or a food analyst¹⁸;
- 18 (18) to make regulations as to sampling and analysis¹⁹;
- 19 (19) to order another food authority to discharge the duties of a food authority in default²⁰;
- 20 (20) to make regulations requiring or authorising charges to be imposed by enforcement authorities²¹; and
- 21 (21) to prescribe the form of any documents²².

Regulations may also make provision for requiring the notification of information about tests on samples taken from individuals (whether living or dead) for the presence of organisms of a specified description, or any substances produced by or in response to the presence of organisms of a description so specified²³.

1 As to the Secretary of State see PARA 224 post.

2 See the Food Safety Act 1990 s 1(2)(d); and PARA 201 ante.

3 See *ibid* s 1(3) (as amended); and PARA 201 ante.

4 See *ibid* s 2(1)(b) (as amended); and PARA 262 post.

5 See *ibid* s 5(4) (as amended); and PARA 251 post.

- 6 See *ibid* s 5(6) (as amended); and PARA 253 post.
- 7 See *ibid* s 6(4) (as amended); and PARA 252 post.
- 8 See *ibid* s 13 (as amended); and PARA 288 post.
- 9 See *ibid* s 16 (as amended); and PARA 289 post.
- 10 See *ibid* s 17 (as amended); and PARA 215 ante.
- 11 See *ibid* s 18(1) (as amended); and PARA 350 post.
- 12 See *ibid* s 18(2) (as amended).
- 13 See *ibid* s 19(1) (as amended); and PARA 273 post.
- 14 See *ibid* s 26(1). Regulations under Pt II (ss 7-26) (as amended) may: (1) make provision for prohibiting or regulating the carrying out of commercial operations with respect to any food, food source or contact material which fails to comply with the regulations, or in relation to which an offence against the regulations has been committed, or would have been committed if any relevant act or omission had taken place in Great Britain; and (2) without prejudice to the generality of the provision relating to inspection and seizure of suspected food (see s 9; and PARA 284 post), provide that any food which, in accordance with the regulations, is certified as being such food as is mentioned in head (1) *supra*, may be treated for the purposes of that provision as failing to comply with food safety requirements: s 26(1). Numerous regulations have been made in exercise of the power under Pt II (as amended) and are set out elsewhere in this title. For the meaning of 'commercial operation' see PARA 241 note 11 post; for the meaning of 'food' see PARA 201 ante; for the meaning of 'food source' see PARA 201 ante; for the meaning of 'contact material' see PARA 241 note 11 post; and for the meaning of 'Great Britain' see PARA 206 note 1 ante.
- 15 See *ibid* s 26(2); and PARA 216 ante.
- 16 See *ibid* s 27(2) (as amended); and PARA 268 post.
- 17 See *ibid* s 27(5) (as amended); and PARA 268 post.
- 18 See *ibid* s 30(9) (as amended); and PARA 267 post.
- 19 See *ibid* s 31 (as amended); and PARA 270 post.
- 20 See *ibid* s 42(1) (as amended); and PARA 258 post.
- 21 See *ibid* s 45 (as amended); and PARA 277 post.
- 22 See *ibid* s 49(2) (as amended); and PARA 275 post.
- 23 See the Food Standards Act 1999 s 27(1); and PARA 291 post.

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) CONTROL BY SUBORDINATE LEGISLATION/218. Power to make regulations under the Food Standards Act 1999.

218. Power to make regulations under the Food Standards Act 1999.

Any power under the Food Standards Act 1999 to make an order or regulations is exercisable in the case of an order or regulations made by the First Minister and deputy First Minister or a Northern Ireland Department, by statutory rule¹, and in any other case, by statutory instrument².

No order under the power to modify enactments about the disclosure of information³, or under the power to regulate animal feedingstuffs in Great Britain⁴ and Northern Ireland⁵, may be made unless a draft of it has been laid before and approved by resolution of: (1) each House of Parliament, if it is made by the Secretary of State⁶ or the Minister of Agriculture, Fisheries and Food⁷; (2) the Scottish Parliament, if it is made by the Scottish Ministers⁸; (3) the Northern Ireland Assembly, if it is made by the First Minister and deputy First Minister or by a Northern Ireland Department⁹.

No recommendation may be made to Her Majesty to make an Order in Council under the power to modify provisions of the Food Standards Act 1999¹⁰, and under the provision relating to the consequences of the Food Standards Agency¹¹ losing certain functions¹², unless a draft of the Order has been laid before and approved by resolution of each House of Parliament, the National Assembly for Wales¹³, the Scottish Parliament and the Northern Ireland Assembly¹⁴.

Subordinate legislation made under: (a) the power to modify enactments about the disclosure of information¹⁵; (b) the provision relating to notification of tests for food-borne disease¹⁶; (c) the power to regulate animal feedingstuffs in Great Britain¹⁷ and Northern Ireland¹⁸; (d) the power to modify provisions of the Food Standards Act 1999¹⁹; and (e) the provision relating to the consequences of the Food Standards Agency losing certain functions²⁰: (i) may contain such supplementary, incidental, consequential, transitional or saving provision as the person making it considers necessary or expedient; and (ii) may make different provision for different purposes²¹.

1 Laid by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, SI 1979/1573: see the Food Standards Act 1999 s 37(2).

2 Ibid s 37(2).

3 See PARA 218 note 1 ante.

4 See PARA 218 note 3 ante.

5 See PARA 218 note 4 ante.

6 As to the Secretary of State see PARA 224 post.

7 As to the Minister of Agriculture, Fisheries and Food see PARA 224 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

8 As to the Scottish Ministers see PARA 226 note 3 post. As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Food Standards Act 1999 s 37(3). As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

- 10 See PARA 218 note 5 ante.
- 11 As to the establishment of the Food Standards Agency see PARA 225 post.
- 12 See PARA 218 note 5 ante.
- 13 As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 14 Food Standards Act 1999 s 37(5).
- 15 Ie subordinate legislation under ibid s 25: see PARA 248 post.
- 16 Ie subordinate legislation under ibid s 27: see PARA 291 post.
- 17 Ie subordinate legislation under ibid s 30: see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 992.
- 18 Ie subordinate legislation under ibid s 31.
- 19 Ie subordinate legislation under ibid s 32: see PARA 233 post.
- 20 Ie subordinate legislation under ibid s 33: see PARA 234 post. For the meaning of 'functions' see PARA 225 note 1 post; definition applied by s 36(4).
- 21 Ibid s 37(1).

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

218 Power to make regulations under the Food Standards Act 1999

NOTE 13--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) CONTROL BY SUBORDINATE LEGISLATION/219. Purposes for which regulations may be made under the Food Standards Act 1999.

219. Purposes for which regulations may be made under the Food Standards Act 1999.

Subordinate legislation may be made under the Food Standards Act 1999 for the following purposes:

- 22 (1) to modify enactments about the disclosure of information¹;
- 23 (2) to require the notification of information about tests on samples taken from individuals for food-borne disease²;
- 24 (3) to regulate animal feedingstuffs in Great Britain³ and Northern Ireland⁴; and
- 25 (4) to modify provisions of the Food Standards Act 1999⁵.

1 See the Food Standards Act 1999 s 25; and PARA 248 post.

2 See *ibid* s 27; and PARA 291 post.

3 See *ibid* s 30; and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 992.

4 See *ibid* s 31.

5 See *ibid* s 32; and PARA 233 post.

UPDATE

207-219 Slaughterhouses and slaughter of animals legislation ... Purposes for which regulations may be made under the Food Standards Act 1999

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(3) CONTROL BY COMMON LAW/220. Criminal law.

(3) CONTROL BY COMMON LAW

220. Criminal law.

As the public health may be imperilled by the use of unwholesome provisions, it is an indictable offence at common law knowingly to give to any person unwholesome food which is not fit for man to eat, or to mix noxious ingredients with food intended for the use of man; and from the strictly legal point of view it is immaterial whether the offence is committed out of malice or from a desire of gain¹. To sell or expose for sale, or have possession of with intent to sell, diseased or unwholesome provisions is a common law nuisance, irrespective of the statutory penalties created by modern legislation², and if a person who eats diseased meat or unwholesome food thereby contracts disease of which he dies, the seller may be indicted for manslaughter, and convicted if the evidence shows that he sold the meat or food knowingly, or was guilty of gross negligence in the way of his trade by allowing it to be sold for human food³.

¹ See *R v Treeve* (1796) 2 East PC 821, CCR; 4 BI Com (14th Edn) 161; and cf *R v Haynes* (1815) 4 M & S 214.

² *Shillito v Thompson* (1875) 1 QBD 12. Selling unwholesome provisions is also indictable at common law as cheating. As to deception see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 310.

³ *R v Kempson* (1893) 28 LJo 477. As to manslaughter generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 92 et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(3) CONTROL BY COMMON LAW/221. Civil law.

221. Civil law.

Food products are goods to which the common law of contract and the statutory provisions in relation to the sale and supply of goods apply¹.

In addition to civil liability under the Consumer Protection Act 1987², the common law of tort applies to the manufacture, distribution and sale of food as it does in relation to other goods³. It is commonly the law of negligence which is relevant⁴.

¹ See eg the Sale of Goods Act 1979; the Supply of Goods and Services Act 1982; and the Unfair Contract Terms Act 1977. See further CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES.

² As to liability for defective products see PARA 212 ante.

³ See generally TORT vol 97 (2010) PARA 401 et seq.

⁴ See generally NEGLIGENCE.

UPDATE

221 Civil law

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(i) In general/222. Meaning of 'enforcement authority' for the purposes of the Food Safety Act 1990.

2. ADMINISTRATION

(1) ENFORCEMENT AUTHORITIES

(i) In general

222. Meaning of 'enforcement authority' for the purposes of the Food Safety Act 1990.

Many powers and duties under the Food Safety Act 1990 are given to enforcement authorities. The 'enforcement authority', in relation to any provisions of the Food Safety Act 1990 or any regulations or orders made under it, means the authority by whom they are to be enforced and executed¹. Depending upon the facts and circumstances of the case, an enforcement authority may be a food authority² (including an authority acting as a food authority where functions are assigned to it³), the Secretary of State⁴, the Minister of Agriculture Fisheries and Food⁵, the Food Standards Agency⁶ or the Commissioners of Customs and Excise⁷.

'Enforcement authority', has a different meaning for certain purposes of the Food Standards Act 1999⁸.

1 Food Safety Act 1990 s 6(1).

2 As to food authorities see PARA 251 et seq post.

3 The authorities to whom this may apply are a port health authority and a joint board for a united district: see PARA 251 post.

4 As to the Secretary of State see PARA 224 post.

5 As to the Minister of Agriculture, Fisheries and Food see PARA 224 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

6 As to the Food Standards Agency see PARA 225 et seq post.

7 See the Food Safety Act 1990 s 6(3) (as amended); and PARA 252 post. As to the Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

As respects any non-metropolitan district of England and Wales: (1) the functions of an enforcement authority under s 12 (which relates to emergency prohibition notices and orders) (see PARA 287 post) must be exercised solely by the council of that district; and (2) the provisions of s 15 (which relates to falsely describing or presenting food) (see PARA 372 post) must be enforced solely by the council of the non-metropolitan county: Food Safety (Enforcement Authority) (England and Wales) Order 1990, SI 1990/2462, arts 1, 2(1). As respects the Inner Temple and the Middle Temple, the functions of an enforcement authority under the Food Safety Act 1990 s 12 must be exercised solely by the appropriate Treasurer, and the provisions of s 15 must be enforced solely by the Common Council of the City of London: Food Safety (Enforcement Authority) (England and Wales) Order 1990, SI 1990/2462, arts 1, 2(2). This does not affect any assignment of functions under the Food Safety Act 1990: (a) to a port health authority by an order under the Public Health (Control of Diseases) Act 1984 s 2 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102); or (b) to a joint board for a united district by an order made under the Public Health Act 1936 s 6 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101): Food Safety (Enforcement Authority) (England and Wales) Order 1990, SI 1990/2462, art 3.

8 See PARA 243 note 3 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(i) In general/223. Authorised officers in relation to enforcement authorities.

223. Authorised officers in relation to enforcement authorities.

'Authorised officer', in relation to an enforcement authority¹, means any person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specially, to act in matters arising under the Food Safety Act 1990 and regulations and orders made under it². However, if regulations made by the Secretary of State³ so provide, no person may be so authorised unless he has such qualifications as may be prescribed by the regulations⁴.

1 For the meaning of 'enforcement authority' see PARA 222 ante.

2 Food Safety Act 1990 s 6(6) (added by the Deregulation and Contracting Out Act 1994 s 76, Sch 16 para 16). At the date at which this volume states the law no such regulations or orders had been made.

3 As to the secretary of state see PARA 224 post.

4 Food Safety Act 1990 s 6(6) (as added (see note 2 supra); and amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). As to the protection of authorised officers see PARA 272 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(ii) Secretary of State/224. Responsibilities and powers of the Secretary of State.

(ii) Secretary of State

224. Responsibilities and powers of the Secretary of State.

Responsibility for the administration and enforcement of the law relating to food was previously that of the Minister of Agriculture, Fisheries and Food¹ and the Secretary of State acting jointly². The office of Secretary of State³ is one, and in law each Secretary of State is capable of performing the functions of all or any of them⁴.

Functions of a Minister of the Crown⁵ under certain legislation relating to food⁶, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales⁷; and specific functions⁸ exercisable by a Minister of the Crown, so far as exercisable in relation to Wales, are exercisable by the Assembly concurrently with the Minister⁹. However, functions under the Food Safety Act 1990 formerly exercised by the Minister of Agriculture, Fisheries and Food jointly with the Secretaries of State respectively concerned with health in England and food and health in Wales have been transferred to the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly¹⁰.

As a result of the Food Standards Act 1999, the functions of the Minister of Agriculture, Fisheries and Food under the Food Safety Act 1990 ceased to be exercised by him¹¹.

The Secretary of State may make one or more schemes¹² for the transfer to the Food Standards Agency¹³ of such property, rights and liabilities of a Minister of the Crown as appear to him appropriate having regard to the functions conferred on the Agency by provision made by or under the Food Safety Act 1990, the Food Standards Act 1999 or the Food Safety (Northern Ireland) Order 1991¹⁴. This power may also be exercised by the National Assembly for Wales, the Scottish Ministers¹⁵ or a Northern Ireland Department¹⁶ in relation to their property, rights and liabilities¹⁷. Various responsibilities in relation to food safety are now vested in the Agency¹⁸.

In addition to the power to make regulations and orders under the Food Safety Act 1990¹⁹, the Secretary of State has power to: (1) direct that any duty imposed on food authorities is to be discharged by the Secretary of State, the Minister of Agriculture, Fisheries and Food or the Agency²⁰; (2) take over the conduct of any proceedings under the Act which have been instituted by some other person, or direct that they be taken over by the Agency²¹; (3) give directions in relation to emergency control orders²²; (4) approve apparatus for the cleansing of shellfish²³; (5) issue codes of recommended practice for the guidance of food authorities²⁴; (6) issue directions to food authorities as to compliance with a code of practice²⁵; (7) require the submission of reports and returns by food authorities²⁶; (8) recover expenses from a food authority in default²⁷; and (9) determine the remuneration and allowances to be paid to any chairman of any tribunal constituted in accordance with regulations under the Act²⁸.

1 As to the Minister of Agriculture, Fisheries and Food see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

2 Food and Drugs Act 1955 s 135(1) (repealed); Food Safety Act 1990 s 4 (repealed); Secretary of State for Social Services Order 1968, SI 1968/1699, art 5(4).

3 In any enactment, 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: Interpretation Act 1978 s 5, Sch 1.

4 As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

5 As to Ministers of the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354.

6 le under the Slaughterhouses Act 1974 (with specified exceptions) (see PARA 470 et seq post); the Food Act 1984 (with specified exceptions) (see PARA 202 ante); the Food and Environment Protection Act 1985 (with specified exceptions) (see PARAS 202 ante, 316-318 post); and the Food Safety Act 1990 (except s 54(4)) (see PARA 202 et seq ante).

7 See the National Assembly for Wales (Transfer of Functions) Order 1999/ SI 1999/672, art 2(a), Sch 1. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 le under the Slaughter of Poultry Act 1967 s 4 (substituted by the Animal Health and Welfare Act 1984 s 8); the Food and Environment Protection Act 1985 ss 1(1), 3(1), (2) (all as amended) (see PARAS 316-317 post); and the Food Safety Act 1990 s 47 (as amended) (see PARA 216 ante).

9 See the National Assembly for Wales (Transfer of Functions) Order 1999/ SI 1999/672, art 2(b), Sch 1. Functions formerly exercised by the Secretary of State or the Secretary of State for Wales under the Slaughter of Poultry Act 1967 have been transferred to the Minister of Agriculture, Fisheries and Food: Transfer of Functions (Agriculture and Food) Order 1999, SI 1999/3141, art 2(1), Sch 1.

10 Ibid art 2(6). As to the Secretary of State for Health see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 463-465.

11 Food Standards Act 1999 s 26(1). However, enforcement functions under directions or subordinate legislation made under the Food Safety Act 1990 (or any power under that Act to confer such functions in directions or subordinate legislation) are unaffected: Food Standards Act 1999 s 26(3).

12 As to the provision that may be made by the transfer scheme see PARA 232 post.

13 As to the establishment of the Food Standards Agency see PARA 225 post.

14 Food Standards Act 1999 s 41(1). The text refers to the Food Safety (Northern Ireland) Order 1991, SI 1991/762 (as amended).

15 As to the Scottish Ministers see PARA 226 note 3 post.

16 As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

17 Food Standards Act 1999 s 41(2).

18 See PARAS 235-250 post.

19 See PARA 216 ante.

20 See the Food Safety Act 1990 s 6(3) (as amended); and PARA 252 post.

21 See ibid s 6(5A), (5B) (as added); and PARA 456 post.

22 See ibid s 13 (as amended); and PARA 288 post.

23 See ibid s 24(3); and PARA 255 post.

24 See ibid s 40(1) (as amended); and PARA 256 post. At the date at which this volume states the law no such codes of practice had been issued.

25 See ibid s 40(2) (as amended); and PARA 256 post.

26 See ibid s 41 (as amended); and PARA 257 post.

27 See ibid s 42(4) (as amended); and PARA 258 post.

28 See ibid s 47 (as amended); and PARA 216 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/225. Establishment and main objective.

(iii) Food Standards Agency

A. ESTABLISHMENT AND CONSTITUTION

225. Establishment and main objective.

The Food Standards Act 1999 makes provision for the establishment of a body corporate to be called the Food Standards Agency (or in Welsh, yr Asiantaeth Safonau Bwyd) ('the Agency') for the purpose of carrying out the functions¹ conferred on it by or under the Act². The Agency was set up on 1 April 2000³. The main objective of the Agency in carrying out its functions is to protect public health from risks which may arise in connection with the consumption of food⁴ (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food⁵. The functions of the Agency are performed on behalf of the Crown⁶.

1 'Functions' includes powers and duties: Food Safety Act 1990 s 53(1); definition applied by the Food Standards Act 1999 s 36(4).

2 Ibid ss 1(1), 2(4), 36(1), Sch 1 para 1. See also the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000, SI 2000/656.

3 Food Standards Act 1999 (Commencement No 1) Order 2000, SI 2000/92; Food Standards Act 1999 (Commencement No 2) Order 2000, SI 2000/1066; Department of Health Press Release 2000/0143 (10 March 2000).

4 For the meaning of 'food' see PARA 201 ante; definition applied by the Food Standards Act 1999 s 36(4).

5 Ibid s 1(2). 'Interests of consumers in relation to food' includes (without prejudice to the generality of that expression) interests in relation to the labelling, marking, presenting or advertising of food, and the descriptions which may be applied to food: s 36(3). 'Presentation', in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising; and 'present' is to be construed accordingly: Food Safety Act 1990 s 53(1); definition applied by the Food Standards Act 1999 s 36(4). 'Advertisement' includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound; and 'advertise' is to be construed accordingly: Food Safety Act 1990 s 53(1); definition applied by the Food Standards Act 1999 s 36(4).

6 Ibid s 1(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/226. Appointment of members, chief executive and directors.

226. Appointment of members, chief executive and directors.

The Food Standards Agency¹ consists of a chairman and deputy chairman and not less than eight or more than 12 other members, of whom one member is appointed by the National Assembly for Wales², two members are appointed by the Scottish Ministers³, one member is appointed by the Department of Health and Social Services for Northern Ireland, and the others are appointed by the Secretary of State⁴. The chairman and deputy chairman are appointed by the appropriate authorities⁵ acting jointly and, before appointing a person as one of the other members of the Agency the authority making the appointment must consult the other appropriate authorities⁶. Before appointing a person as chairman, deputy chairman or member of the Agency, the authorities or authority making the appointment must: (1) have regard to the desirability of securing that a variety of skills and experience is available among the members of the Agency (including experience in matters related to food⁷ safety or other interests of consumers in relation to food⁸); and (2) consider whether any person it is proposed to appoint has any financial or other interest which is likely to prejudice the exercise of his duties⁹.

A chief executive is appointed for the Agency¹⁰, who is responsible for, among other things, securing that its activities are carried out efficiently and effectively¹¹. The first appointment of a chief executive is to be made by the appropriate authorities acting jointly, and subsequent appointments may be made by the Agency, subject to the approval of each of those authorities¹².

Directors are appointed for Wales, for Scotland and for Northern Ireland, each of whom is responsible under the chief executive for, among other things, securing that the activities of the Agency in Wales, Scotland or Northern Ireland (as the case may be) are carried out efficiently and effectively¹³. The first appointment of Director for Wales, for Scotland and for Northern Ireland is to be made by the appropriate authority for that part of the United Kingdom¹⁴, and subsequent appointments may be made by the Agency, subject to the approval of that authority¹⁵.

The chief executive and the directors appointed hold and vacate office in accordance with the terms of their appointments¹⁶.

The Agency may, with the approval of the Minister for the Civil Service¹⁷ as to numbers and terms and conditions of service, appoint such staff as it may determine¹⁸.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 As to the members of the Scottish Executive: see the Scotland Act 1998 s 44; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Food Standards Act 1999 s 2(1). As to the Secretary of State see PARA 224 ante. The eight members appointed by the Secretary of State were announced on 2 March 2000: see the Department of Health Press Release 2000/0126 (2 March 2000).

5 'Appropriate authorities' means the Secretary of State, the National Assembly for Wales, the Scottish Ministers and the Department of Health and Social Services for Northern Ireland: Food Standards Act 1999 s 36(1).

- 6 Ibid s 2(2).
- 7 For the meaning of 'food' see PARA 201 ante; definition applied by ibid s 36(4).
- 8 For the meaning of 'interests of consumers in relation to food' see PARA 225 note 5 ante.
- 9 Food Standards Act 1999 s 2(3).
- 10 Ibid s 3(1).
- 11 Ibid s 3(2).
- 12 Ibid s 3(3).
- 13 Ibid s 3(4).
- 14 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.
- 15 Food Standards Act 1999 s 3(5).
- 16 Ibid s 3(6).
- 17 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 549, 550.
- 18 Food Standards Act 1999 Sch 1 para 8(1), which is subject to s 3 (see the text to notes 10-15 supra) in the case of the chief executive and the directors for Wales, Scotland and Northern Ireland: Sch 1 para 8(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/227. Tenure of office, remuneration and pensions of members.

227. Tenure of office, remuneration and pensions of members.

A person appointed as chairman or deputy chairman or as one of the other members of the Food Standards Agency¹ must hold and vacate office in accordance with the terms of his appointment and, on ceasing to hold that office, is eligible for re-appointment². The terms of appointment of the chairman, deputy chairman and other members is to be determined by the appropriate authorities³ acting jointly⁴.

The person holding office as chairman or deputy chairman may resign his office by giving notice to any of the appropriate authorities (and on doing so ceases to be a member of the Agency), and may be removed from office by the appropriate authorities acting jointly if they are satisfied that he is eligible to be removed⁵. A member other than the chairman or deputy chairman may resign his office by giving notice to the authority by which he was appointed, and may be removed from office by that authority if it is satisfied that he is eligible to be removed⁶.

A person may be removed from office as chairman, deputy chairman or other member only if he has been adjudged bankrupt, has had his estate sequestrated or has made a composition or arrangement with, or granted a trust deed for, his creditors⁷, or he is failing to carry out the duties of his office or is otherwise unable or unfit to carry out those duties⁸.

The Agency must pay its members such remuneration, and such travelling and other allowances, as may be determined by the appropriate authorities acting jointly⁹. The Agency must, if so required by the appropriate authorities acting jointly: (1) pay such pensions, allowances or gratuities as may be determined by the appropriate authorities acting jointly¹⁰; (2) make such payments as may be so determined towards provision for the payment of pensions, allowances or gratuities¹¹; or (3) provide and maintain such schemes (whether contributory or not) as may be so determined for the payment of pensions, allowances or gratuities¹², to or in respect of persons who are or have been members¹³.

If, when a person ceases to hold office as a member, the appropriate authorities acting jointly determine that there are special circumstances which make it right that he should receive compensation, the Agency must pay to him a sum by way of compensation of such amount as may be so determined¹⁴.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 2(4), Sch 1 para 2(1).

3 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.

4 Food Standards Act 1999 Sch 1 para 2(2).

5 Ibid Sch 1 para 3(1).

6 Ibid Sch 1 para 3(2).

7 See BANKRUPTCY; CIVIL PROCEDURE.

8 Food Standards Act 1999 Sch 1 para 4.

9 Ibid Sch 1 para 5(1).

- 10 Ibid Sch 1 para 5(2)(a).
- 11 Ibid Sch 1 para 5(2)(b).
- 12 Ibid Sch 1 para 5(2)(c).
- 13 Ibid Sch 1 para 5(2).
- 14 Ibid Sch 1 para 6.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/228. Proceedings and delegation of powers.

228. Proceedings and delegation of powers.

The Food Standards Agency¹ may regulate its own procedure (including quorum) and must, in particular, establish and maintain a system for the declaration and registration of private interests of its members². The entries recorded in the register of members' interests must be published by the Agency³.

The validity of any proceedings of the Agency is not affected by a vacancy amongst its members or by a defect in the appointment of a member⁴.

A document purporting to be duly executed under the seal of the Agency, or signed on behalf of the Agency, may be received in evidence and must, unless the contrary is proved, be taken to be so executed or signed⁵.

Anything authorised or required to be done by the Agency (including the exercise of this power to delegate) may be done by any member of the Agency who, or any committee (or sub-committee) of the Agency which, is authorised for the purpose by the Agency, whether generally or specially⁶. However, this provision does not affect the rule of law by virtue of which functions of the Agency may be carried out through members of its staff⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 2(4), Sch 1 para 9(1).

3 Ibid Sch 1 para 9(2).

4 Ibid Sch 1 para 10.

5 Ibid Sch 1 para 11.

6 Ibid Sch 1 para 12(1).

7 Ibid Sch 1 para 12(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/229. Advisory committees.

229. Advisory committees.

An advisory committee for Wales, an advisory committee for Scotland and an advisory committee for Northern Ireland have been established for the purpose of giving advice or information to the Food Standards Agency¹ about matters connected with its functions² (including in particular matters affecting or otherwise relating to Wales, Scotland or Northern Ireland, as the case may be)³.

The Secretary of State⁴ may, after consulting the Agency, direct that an advisory committee for, or for any region of, England is to be established for the purpose of giving advice or information to the Agency about matters connected with its functions (including in particular matters affecting or otherwise relating to the area for which the committee is established)⁵.

The Agency may, after consulting the appropriate authorities⁶, establish other advisory committees for the purpose of giving advice or information to the Agency about matters connected with its functions⁷.

The advisory committee or committees established for England⁸ must consist of a chairman and such other persons as may be appointed by the Secretary of State, after consulting the Agency⁹. No more than two persons so appointed may be members of the Agency¹⁰. The advisory committees established for Wales, Scotland and Northern Ireland¹¹ must consist of: (1) a chairman appointed by the appropriate authority¹² from among the members of the Agency¹³; and (2) such other persons as may be appointed by the appropriate authority, after consulting the Agency¹⁴.

The basic terms of reference of the advisory committee or committees for England and the advisory committees established for Wales, Scotland and Northern Ireland are to carry out the purpose of giving advice or information to the Agency about matters connected with their functions¹⁵, but the Agency may, with the approval of, in the case of the advisory committee or committees for England, the Secretary of State, or in the case of the advisory committees established for Wales, Scotland and Northern Ireland, the appropriate authority, supplement the terms of reference of any such committee¹⁶.

The members of other advisory committees¹⁷ must consist of such persons as may be appointed by the Agency, after consulting the appropriate authorities¹⁸. The members so appointed may include members of the Agency¹⁹. The terms of reference of such a committee are such as the Agency may determine²⁰. The Agency may, after consulting the appropriate authorities, abolish such a committee²¹.

The Agency may pay to the members of an advisory committee such remuneration or allowances in respect of expenses (or both) as it may determine²². Any expenditure incurred by an advisory committee is to be defrayed by the Agency²³.

The Secretary of State or the Minister of Agriculture, Fisheries and Food²⁴ may direct that any advisory committee specified in the direction must, from such date as may be so specified, be treated as if it had been established by the Agency²⁵ and its members appointed accordingly²⁶. Such a direction may be given only if the committee in question is maintained for the purpose of giving advice or information to any one or more public authorities on matters connected with the Agency's functions²⁷. Before giving such a direction the person giving it must consult the Agency, and any public authority which the committee is maintained to give advice²⁸.

- 1 As to the establishment of the Food Standards Agency see PARA 225 ante.
- 2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).
- 3 Ibid s 5(1).
- 4 As to the Secretary of State see PARA 224 ante.
- 5 Food Standards Act 1999 s 5(2).
- 6 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.
- 7 Food Standards Act 1999 s 5(3).
- 8 Ie established under ibid s 5(2): see the text to note 5 supra.
- 9 Ibid s 5(4), Sch 2 para 2(1), (2).
- 10 Ibid Sch 2 para 2(3).
- 11 Ie under ibid s 5(1): see the text to note 3 supra.
- 12 For these purposes, 'appropriate authority', in relation to any committee, means the appropriate authority for the part of the United Kingdom for which the committee is established: ibid Sch 2 para 1(5). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.
- 13 Ibid Sch 2 para 1(1), (2)(a).
- 14 Ibid Sch 2 para 1(1), (2)(b). No more than one member appointed under head (2) in the text may be a member of the Agency: Sch 2 para 1(3).
- 15 Ie under ibid s 5(1) or s 5(2): see the text to notes 3, 5 supra.
- 16 Ibid Sch 2 paras 1(4), 2(4).
- 17 Ie established under ibid s 5(3): see the text to note 7 supra.
- 18 Ibid Sch 2 para 3(1).
- 19 Ibid Sch 2 para 3(2).
- 20 Ibid Sch 2 para 3(3).
- 21 Ibid Sch 2 para 4.
- 22 Ibid Sch 2 para 5.
- 23 Ibid Sch 2 para 6.
- 24 As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.
- 25 Ie under the Food Standards Act 1999 s 5: see the text and notes 3-9 supra.
- 26 Ibid Sch 2 para 7(1). The members must be appointed in accordance with Sch 2 para 3(1): see the text to note 18 supra.
Such a direction may not be given in relation to a committee which: (1) is established on or after 1 April 2000 (ie the day on which Sch 2 para 7 comes into force); or (2) is established, or is required to be established, by any enactment: Sch 2 para 7(3).
- 27 Ibid Sch 2 para 7(2).
- 28 Ibid Sch 2 para 7(4).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/230. Joint committees.

230. Joint committees.

The Food Standards Agency¹ may join with one or more other public authorities in making arrangements for establishing a joint committee to advise the Agency and the other authority or authorities on such matters connected with their functions² as they may determine³. The Agency must consult the appropriate authorities⁴ before making any such arrangements⁵. The membership, terms of reference and any remuneration or allowances for members must be in accordance with those arrangements⁶. The expenditure of a joint advisory committee must be defrayed by the Agency and the other authority or authorities in accordance with those arrangements⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 Ibid s 5(4), Sch 2 para 8(1), which is expressed to be without prejudice to the generality of s 21 (see PARA 465 post).

4 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.

5 Food Standards Act 1999 Sch 2 para 8(4).

6 Ibid Sch 2 para 8(2).

7 Ibid Sch 2 para 8(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/231. Annual and other reports.

231. Annual and other reports.

The Food Standards Agency¹ must prepare a report² on its activities and performance during each financial year³. The Agency must, as soon as possible after the end of each financial year, lay its report for that year before Parliament⁴, the National Assembly for Wales⁵, the Scottish Parliament and the Northern Ireland Assembly⁶. The Agency may from time to time lay other reports before any of those bodies⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 As to the content of the annual report prepared under the Food Standards Act 1999 s 4 see PARA 243 post.

3 Ibid s 4(1).

4 See PARLIAMENT vol 78 (2010) PARA 801 et seq.

5 As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Food Standards Act 1999 s 4(2). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

7 Food Standards Act 1999 s 4(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/232. Transfer of properties, rights and liabilities to the Food Standards Agency.

232. Transfer of properties, rights and liabilities to the Food Standards Agency.

The Secretary of State¹ may make one or more schemes for the transfer to the Food Standards Agency² of such property, rights and liabilities of a Minister of the Crown ('the transferor') as appear to him appropriate having regard to the functions³ conferred on the Agency by provision made by or under the Food Standards Act 1999, the Food Safety Act 1990 or the Food Safety (Northern Ireland) Order 1991⁴.

A transfer scheme may:

- 26 (1) provide for the transfer of property, rights and liabilities that would not otherwise be capable of being transferred or assigned⁵;
- 27 (2) define property, rights and liabilities by specifying or describing them or by referring to all of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor (or partly in one way and partly in the other)⁶;
- 28 (3) provide for the creation (a) in favour of the transferor, or of the Agency, of interests in, or rights over, property to be transferred or, as the case may be, retained by the transferor; or (b) of new rights and liabilities as between the Agency and the transferor⁷;
- 29 (4) require the transferor or the Agency to take any steps necessary to secure that the transfer of any foreign property, rights or liabilities is effective under the relevant foreign law⁸; and
- 30 (5) make such incidental, supplemental and consequential provision as the authority making it considers appropriate⁹.

On the date appointed by a transfer scheme the property, rights and liabilities which are the subject of the scheme become, by virtue of this provision, property, rights and liabilities of the Agency (and any other provisions of the scheme take effect)¹⁰.

The authority¹¹ making a transfer scheme may, at any time before the date so appointed, modify the scheme¹².

1 As to the Secretary of State see PARA 224 ante. The power conferred by the Food Standards Act 1999 s 41(1) (see the text to note 4 infra) may also be exercised by the National Assembly for Wales, the Scottish Ministers or a Northern Ireland Department in relation to their property, rights and liabilities: s 41(2). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

4 Ibid s 41(1). The text refers to the Food Safety (Northern Ireland) Order 1991, SI 1991/762 (as amended): see the Food Standards Act 1999 s 41(1).

5 Food Standards Act 1999 s 41(3)(a).

6 Ibid s 41(3)(b).

7 Ibid s 41(3)(c).

- 8 Ibid s 41(3)(d).
- 9 Ibid s 41(3)(e).
- 10 Ibid s 41(4).
- 11 See note 1 supra.
- 12 Food Standards Act 1999 s 41(5).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/233. Modification of the Food Standards Act 1999.

233. Modification of the Food Standards Act 1999.

Her Majesty may by Order in Council make such provision as she considers appropriate for modifying¹:

- 31 (1) the functions² exercisable under the Food Standards Act 1999 by any of the appropriate authorities³ (including functions exercisable jointly by two or more of them)⁴;
- 32 (2) the powers under the Food Standards Act 1999 of either House of Parliament⁵, the Scottish Parliament or the Northern Ireland Assembly⁶; or
- 33 (3) the constitution of the Food Standards Agency⁷.

Without prejudice to the generality of heads (1) to (3) above, provision made under head (1) or head (2) above may⁸:

- 34 (a) confer on any one or more of the appropriate authorities functions (including powers to make subordinate legislation) which relate to anything connected with the Agency or its activities⁹; or
- 35 (b) confer powers on either House of Parliament, the Scottish Parliament or the Northern Ireland Assembly¹⁰.

Where provision is made under head (1) or head (2) above, the provision which may be made in the Order¹¹ includes provision modifying functions of, or conferring functions on, the Agency or any other person in connection with any one or more of the appropriate authorities or with any body mentioned in head (2) above¹².

No recommendation may be made to Her Majesty in Council to make an Order under this provision¹³ unless the Agency has been consulted¹⁴.

1 Food Standards Act 1999 s 32(1). At the date at which this volume states the law no such orders had been made.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by *ibid* s 36(4).

3 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.

4 Food Standards Act 1999 s 32(1)(a).

5 See generally PARLIAMENT vol 78 (2010) PARA 801 et seq.

6 Food Standards Act 1999 s 32(1)(b). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

7 Food Standards Act 1999 s 32(1)(c). For this purpose the reference to the constitution of the Agency is a reference to the subject-matter of ss 2, 3, 4, 5, 39(7), Schs 1, 2, 4 (see PARAS 226-229 ante, 279-281 post): s 32(4). As to the establishment of the Food Standards Agency see PARA 225 ante.

8 *Ibid* s 32(2).

9 *Ibid* s 32(2)(a).

10 Ibid s 32(2)(b).

11 Ie by virtue of ibid s 37(1)(a): see PARA 218 ante.

12 Ibid s 32(3). The provision which may be made by an Order under s 32 does not include provision modifying s 32 or s 33 (see PARA 234 post) (except that where provision is made under head (1) in the text, the Order may make consequential amendments to s 32(4) (see note 7 supra)): s 32(5).

13 Ie under ibid s 32: see the text and notes 1-12 supra, 14 infra.

14 Ibid s 32(6).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

233 Modification of the Food Standards Act 1999

TEXT AND NOTES 5, 6--1999 Act s 32(1)(b) amended: SI 2007/1388.

TEXT AND NOTE 10--1999 Act s 32(2)(b) amended: SI 2007/1388.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/A. ESTABLISHMENT AND CONSTITUTION/234. Consequences of the Food Standards Agency losing certain functions.

234. Consequences of the Food Standards Agency losing certain functions.

If the Scottish Parliament¹ passes an Act providing for any functions² of the Food Standards Agency³ to be no longer exercisable in or as regards Scotland, or the Northern Ireland Assembly⁴ passes an Act providing for any functions of the Agency to be no longer exercisable in or as regards Northern Ireland⁵, Her Majesty may by Order in Council make provision⁶:

- 36 (1) modifying the Food Standards Act 1999 or any other Act as she considers necessary or expedient in consequence of the functions concerned being no longer exercisable by the Agency in or as regards Scotland or Northern Ireland⁷;
- 37 (2) for the transfer of any property, rights and interests of the Agency⁸;
- 38 (3) for any person to have such rights or interests in relation to any property, rights or interests⁹ as she considers appropriate (whether in connection with a transfer or otherwise)¹⁰; or
- 39 (4) for the transfer of any liabilities of the Agency¹¹.

Such an Order may make provision for the delegation of powers to determine anything required to be determined for the purposes of provision made under head (2), head (3) or head (4) above¹². No recommendation may be made to Her Majesty in Council to make such an Order unless the Agency has been consulted¹³.

1 As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 As to the establishment of the Food Standards Agency see PARA 225 ante.

4 As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

5 Food Standards Act 1999 s 33(1).

6 Ibid s 33(2). At the date at which this volume states the law no such orders had been made.

7 Ibid s 33(2)(a).

8 Ibid s 33(2)(b). Such property, rights and interests of the Agency must fall within s 33(3): s 33(2)(b). Property, rights and interests fall within s 33(3) if they belong to the Agency and appear to Her Majesty: (1) to be held or used wholly or partly for or in connection with the exercise of any of the functions concerned; or (2) not to be within head (1) supra but, when last held or used for or in connection with the exercise of any function, to have been so held or used for or in connection with the exercise of any of the functions concerned: s 33(3).

9 Such property, rights and interests of the Agency must fall within ibid s 33(3): s 33(2)(c). See note 8 supra.

10 Ibid s 33(2)(c).

11 Ibid s 33(2)(d). Such liabilities must fall within s 33(4): s 33(2)(d). Liabilities of the Agency fall within s 33(4) if they appear to Her Majesty to have been incurred wholly or partly for or in connection with the exercise of any of the functions concerned: s 33(4).

12 Ibid s 33(5).

13 Ibid s 33(6).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/B. GENERAL FUNCTIONS/235. General functions in relation to food.

B. GENERAL FUNCTIONS

235. General functions in relation to food.

The Food Standards Agency¹ has the following general functions² in relation to food³:

- 40 (1) developing policies (or assisting in the development by any public authority of policies) relating to matters connected with food safety or other interests of consumers in relation to food⁴;
- 41 (2) providing advice, information or assistance in respect of such matters to any public authority⁵;
- 42 (3) providing advice and information to the general public (or any section of the public) in respect of matters connected with food safety or other interests of consumers in relation to food⁶;
- 43 (4) providing advice, information or assistance in respect of such matters to any person who is not a public authority⁷;
- 44 (5) obtaining, compiling and keeping under review information about matters connected with food safety and other interests of consumers in relation to food⁸, including, among other things: (a) monitoring developments in science, technology and other fields of knowledge relating to the matters mentioned in head (5)⁹; and (b) carrying out, commissioning or co-ordinating research on those matters¹⁰.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 For the meaning of 'food' see PARA 201 ante; definition applied by ibid s 36(4).

4 Ibid s 6(1)(a). For the meaning of 'interests of consumers in relation to food' see PARA 225 note 5 ante.

5 Ibid s 6(1)(b). A Minister of the Crown or government department, the National Assembly for Wales, the Scottish Ministers or a Northern Ireland Department may request the Agency to exercise its powers under head (1) or head (2) in the text in relation to any matter (s 6(2)), and it is the duty of the Agency, so far as is reasonably practicable, to comply with any such request (s 6(3)). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

6 Food Standards Act 1999 s 7(1)(a). The function under head (3) in the text must be carried out (without prejudice to any other relevant objectives) with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about food: s 7(2).

7 Ibid s 7(1)(b).

8 Ibid s 8(1). This function is (without prejudice to any other relevant objectives) to be carried out with a view to ensuring that the Agency has sufficient information to enable it to take informed decisions and to carry out its other functions effectively: s 8(3).

9 Ibid s 8(2)(a).

10 Ibid s 8(2)(b).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/B. GENERAL FUNCTIONS/236. General functions in relation to animal feedingstuffs.

236. General functions in relation to animal feedingstuffs.

The Food Standards Agency¹ has the following general functions² in relation to matters connected with the safety of animal feedingstuffs³ and other interests of users of animal feedingstuffs:

- 45 (1) developing policies (or assisting in the development by any public authority of policies) relating to matters connected with the safety of animal feedingstuffs and other interests of users of animal feedingstuffs⁴;
- 46 (2) providing advice, information or assistance in respect of such matters to any public authority⁵;
- 47 (3) providing advice and information to the general public (or any section of the public) in respect of matters connected with the safety of animal feedingstuffs and other interests of users of animal feedingstuffs⁶;
- 48 (4) providing advice, information or assistance in respect of such matters to any person who is not a public authority⁷;
- 49 (5) obtaining, compiling and keeping under review information about matters connected with the safety of animal feedingstuffs and other interests of users of animal feedingstuffs⁸, including, among other things: (a) monitoring developments in science, technology and other fields of knowledge relating to the matters mentioned in head (5)⁹; and (b) carrying out, commissioning or co-ordinating research on those matters¹⁰.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 'Safety of animal feedingstuffs' means the safety of animal feedingstuffs in relation to risks to animal health which may arise in connection with their consumption: *ibid* s 9(4). 'Animal feedingstuff' means feedingstuff for any description of animals, including any nutritional supplement or other similar substance which is not administered through oral feeding: s 36(1). 'Animal' includes any bird or fish: see s 36(4). For the meaning of 'fish' see PARA 201 note 3 ante; definition applied by s 36(4). As to animal feedingstuffs see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 941 et seq.

4 *Ibid* s 6(1)(a); applied by s 9(1). For the meaning of 'interests of consumers in relation to food' see PARA 225 note 5 ante.

5 *Ibid* s 6(1)(b); applied by s 9(1). A Minister of the Crown or government department, the National Assembly for Wales, the Scottish Ministers or a Northern Ireland Department may request the Agency to exercise its powers under head (1) or head (2) in the text in relation to any matter (s 6(2); applied by s 9(2)), and it is the duty of the Agency, so far as is reasonably practicable, to comply with any such request (s 6(3); applied by s 9(2)). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

6 Food Standards Act 1999 s 7(1)(a); applied by s 9(1). The function under head (3) in the text must be carried out (without prejudice to any other relevant objectives) with a view to ensuring that users of animal feedingstuffs are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about animal feedingstuffs: s 7(2); applied by s 9(3).

7 *Ibid* s 7(1)(b); applied by s 9(1).

8 Ibid s 8(1); applied by s 9(1). This function is (without prejudice to any other relevant objectives) to be carried out with a view to ensuring that the Agency has sufficient information to enable it to take informed decisions and to carry out its other functions effectively: s 8(3); applied by s 9(1).

9 Ibid s 8(2)(a); applied by s 9(1).

10 Ibid s 8(2)(b); applied by s 9(1).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

236 General functions in relation to animal feedingstuffs

NOTE 4--The Food Standards Agency is the national competent authority relating to genetically modified animal feed: Genetically Modified Animal Feed (England) Regulations 2004, SI 2004/2334 (amended by SI 2007/3007); Genetically Modified Animal Feed (Wales) Regulations 2004, SI 2004/3221 (amended by SI 2005/1323, SI 2007/3173) (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 993 et seq).

NOTE 5--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/B. GENERAL FUNCTIONS/237. Statement of general objectives and practices.

237. Statement of general objectives and practices.

The Food Standards Agency¹ must prepare and publish a statement of general objectives it intends to pursue, and general practices it intends to adopt, in carrying out its functions². The statement must include the following among the Agency's general objectives³:

- 50 (1) securing that its activities are the subject of consultation with, or with representatives of, those affected and, where appropriate, with members of the public⁴;
- 51 (2) promoting links with government departments, local authorities and other public authorities, the National Assembly for Wales⁵ (and its staff) and Assembly Secretaries, the Scottish Administration⁶ and Northern Ireland Departments⁷ with responsibilities affecting food⁸ safety or other interests of consumers in relation to food⁹, with a view to securing that the Agency is consulted informally from time to time about the general manner in which any such responsibilities are discharged¹⁰;
- 52 (3) securing that records of its decisions, and the information on which they are based, are kept and made available with a view to enabling members of the public to make informed judgments about the way in which it is carrying out its functions¹¹,

and any other objectives (which may include more specific objectives relating to anything mentioned in heads (1) to (3) above) which are notified to the Agency by the appropriate authorities¹² acting jointly¹³.

The statement must be submitted in draft to the appropriate authorities for their approval before it is published¹⁴. The appropriate authorities acting jointly may approve the draft statement submitted to them with or without modifications (but they must consult the Agency before making any modifications)¹⁵. As soon as practicable after a statement is approved, the Agency must lay a copy of the statement as so approved before Parliament, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly, and publish that statement in such manner as the appropriate authorities acting jointly may approve¹⁶.

The Agency may revise its current statement and the same procedure¹⁷ applies to a revised statement as it applies to the first statement¹⁸.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 22(1). For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by s 36(4). At the date at which this volume states the law a draft Statement of General Objectives and Practices (21 June 2000) had been published for consultation.

3 Food Standards Act 1999 s 22(2).

4 Ibid s 22(2)(a).

5 As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 As to the Scottish Administration see the Scotland Act 1998 s 126(6); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 51-66.

- 7 As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.
- 8 For the meaning of 'food' see PARA 201 ante; definition applied by the Food Standards Act 1999 s 36(4).
- 9 For the meaning of 'interests of consumers in relation to food' see PARA 225 note 5 ante.
- 10 Food Standards Act 1999 s 22(2)(b).
- 11 Ibid s 22(2)(c).
- 12 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.
- 13 Food Standards Act 1999 ss 22(2), (3).
- 14 Ibid s 22(4). The statement must be submitted to the appropriate authorities within the period of three months beginning with the date of the first meeting of the Agency: s 22(7). 'Month' means a calendar month: Interpretation Act 1978 s 5, Sch 1.
- 15 Food Standards Act 1999 s 22(5).
- 16 Ibid s 22(6). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.
- 17 Ie the Food Standards Act 1999 s 22(2)-(6): see the text to notes 10-16 supra.
- 18 Ibid s 22(8).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

237 Statement of general objectives and practices

TEXT AND NOTES 5-10--1999 Act s 22(2)(b) amended: SI 2007/1388.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/B. GENERAL FUNCTIONS/238. Duty to consider objectives, risks, costs and benefits.

238. Duty to consider objectives, risks, costs and benefits.

In carrying out its functions¹ the Food Standards Agency² must pay due regard to the statement of objectives and practices³ it has issued⁴. In considering whether or not to exercise any power, or the manner in which to exercise any power, the Agency must take into account, among other things⁵:

- 53 (1) the nature and magnitude of any risks to public health, or other risks, which are relevant to the decision (including any uncertainty as to the adequacy or reliability of the available information)⁶;
- 54 (2) the likely costs and benefits of the exercise or non-exercise of the power or its exercise in any manner which the Agency is considering⁷; and
- 55 (3) any relevant advice or information given to it by an advisory committee (whether or not given at the Agency's request)⁸.

The duty under heads (1) to (3) above does not apply to the extent that it is unreasonable or impracticable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, and does not affect the obligation of the Agency to discharge any other duties imposed on it⁹.

1 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 As to the statement of general objectives and practices see PARA 237 ante.

4 Food Standards Act 1999 s 23(1).

5 Ibid s 23(2).

6 Ibid s 23(2)(a).

7 Ibid s 23(2)(b).

8 Ibid s 23(2)(c).

9 Ibid s 23(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/B. GENERAL FUNCTIONS/239. Duty to take account of the functions of the Food Safety Promotion Board.

239. Duty to take account of the functions of the Food Safety Promotion Board.

The Food Standards Agency¹ must: (1) take account of the activities of the Food Safety Promotion Board² in determining what action to take for the purpose of carrying out its functions³; and (2) consult the Board from time to time with a view to ensuring so far as is practicable that the activities of the Agency do not unnecessarily duplicate the activities of the Board⁴.

Nothing in the Food Standards Act 1999 affects the functions of the Food Safety Promotion Board⁵.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 'Food Safety Promotion Board' means the body of that name established by the agreement establishing implementation bodies done at Dublin on 8 March 1999 between the Government of the United Kingdom and the Government of Ireland: Food Standards Act 1999 s 36(1). For the meaning of 'United Kingdom' see PARA 206 note 1 ante. The Food Safety Promotion Board is one of the implementation bodies set up under the British-Irish Agreement and the Multi-Party Agreement done on 10 April 1998 (the Good Friday Agreement) and has as its functions the promotion of food safety, research into food safety, communication of food alerts, surveillance of food borne diseases, promotion of scientific co-operation and linkages between laboratories and the development of cost-effective facilities for specialised laboratory testing: see the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999, reg 8, Sch 1. See also the Department of Health, Social Services and Public Safety Press Release (2 February 2000).

3 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

4 Ibid s 34(1).

5 Ibid 34(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/240. General powers.

C. POWERS

240. General powers.

The Food Standards Agency¹ has power, amongst other things², to: (1) carry out observations with a view to obtaining information about any aspect of the production or supply of food³; (2) monitor the performance of enforcement authorities in enforcing food legislation⁴; (3) issue guidance to local authorities or other public authorities on the control of outbreaks of food-borne disease⁵; and (4) make arrangements for sharing information about food-borne zoonoses⁶.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 As to the general supplementary powers of the Agency see PARA 241 et seq post.

3 See PARA 241 post. For the meaning of 'food' see PARA 201 ante.

4 See PARA 243 post.

5 See PARAS 249, 290-291 post.

6 See PARA 292 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/241. Power to carry out observations.

241. Power to carry out observations.

The Food Standards Agency¹ may, for the purpose of carrying out its function² of obtaining, compiling and keeping under review information about matters connected with food³ safety and other interests of consumers in relation to food⁴ and matters connected with the safety of animal feedingstuffs⁵ and other interests of users of animal feedingstuffs⁶, carry out observations (or arrange with other persons for observations to be carried out on its behalf) with a view to obtaining information about⁷: (1) any aspect of the production or supply of food or food sources⁸; or (2) any aspect of the production, supply or use of animal feedingstuffs⁹.

The information that may be sought through such observations includes information about¹⁰: (a) food premises¹¹, food businesses or commercial operations being carried out with respect to food, food sources or contact materials¹²; (b) agricultural premises¹³, agricultural businesses or agricultural activities¹⁴; (c) premises, businesses or operations involved in fish farming¹⁵; or (d) premises, businesses or operations involved in the production, supply or use of animal feedingstuffs¹⁶.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 For the meaning of 'food' see PARA 201 ante; definition applied by ibid s 36(4).

4 Ie under ibid s 8: see PARA 235 ante. For the meaning of 'interests of consumers in relation to food' see PARA 225 note 5 ante.

5 For the meaning of 'safety of animal feedingstuffs' see PARA 236 note 3 ante; and for the meaning of 'animal feedingstuffs' see PARA 236 note 3 ante.

6 Ie under the Food Standards Act 1999 s 9: see PARA 236 ante.

7 Ibid s 10(1).

8 Ibid s 10(1)(a). For the meaning of 'food source' see PARA 201 ante; definition applied by s 36(4).

9 Ibid s 10(1)(b).

10 Ibid s 10(2), which is without prejudice to the generality of s 10(1) (see the text and notes 1-9 supra).

11 'Food premises' means any premises used for the purposes of a food business: Food Safety Act 1990 s 1(3); definition applied by the Food Standards Act 1999 s 36(4). For the meaning of 'premises' see PARA 204 note 16 ante; definition applied by s 36(4). 'Food business' means any business in the course of which commercial operations with respect to food or food sources are carried out: Food Safety Act 1990 s 1(3); definition applied by the Food Standards Act 1999 s 36(4). For the meaning of 'business' see PARA 201 note 3 ante; definition applied by s 36(4). 'Commercial operation', in relation to any food or contact material, means any of the following: (1) selling, possessing for sale and offering, exposing or advertising for sale; (2) consigning, delivering or serving by way of sale; (3) preparing for sale or presenting, labelling or wrapping for the purpose of sale; (4) storing or transporting for the purpose of sale; (5) importing and exporting; and, in relation to any food source, means deriving food from it for the purpose of sale or for purposes connected with sale: Food Safety Act 1990 s 1(3); definition applied by the Food Standards Act 1999 s 36(4). 'Contact material' means any article or substance which is intended to come into contact with food: Food Safety Act 1990 s 1(3) (definition amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8); definition applied by the Food Standards Act 1999 s 36(4).

12 Ibid s 10(2)(a).

13 'Agricultural premises' means any premises used for the purposes of an agricultural business: *ibid* s 10(3). For these purposes, 'agricultural business' has the same meaning as in the Farm Land and Rural Development Act 1988 s 1 (as amended) or, in Northern Ireland, the Farm Business (Northern Ireland) Order 1988, SI 1988/1302, art 3 (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1350): Food Standards Act 1999 s 10(3).

14 *Ibid* s 10(2)(b). For these purposes, 'agricultural activity' has the same meaning as in the Agriculture Act 1947 s 109 or, in Northern Ireland, the Agriculture (Northern Ireland) Act 1949: Food Standards Act 1999 s 10(3).

15 *Ibid* s 10(2)(c). 'Fish farming' means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean or mollusc): s 10(3).

16 *Ibid* s 10(2)(d).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/242. Power of entry and sampling.

242. Power of entry and sampling.

The Food Standards Agency¹ may authorise any individual (whether a member of its staff or otherwise) to exercise specified powers for the purpose of carrying out any observations² specified in the authorisation³. No such authorisation may be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency⁴. An authorisation must be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation)⁵.

An authorised person may, if it appears to him necessary to do so for the purpose of carrying out the observations so specified⁶: (1) enter any premises⁷ at any reasonable hour⁸; (2) take samples of any articles⁹ or substances¹⁰ found on any premises¹¹; (3) take samples from any food source¹² found on any premises¹³; (4) inspect and copy any records found on any premises which relate to a business¹⁴ which is the subject of the observations (and, if they are kept in computerised form, require them to be made available in a legible form)¹⁵; (5) require any person carrying on such a business to provide him with such facilities, such records or information and such other assistance as he may reasonably request¹⁶.

An authorised person must on request produce his authorisation before exercising any powers under heads (1) to (5) above, and provide a document identifying any sample taken, or documents copied, under those powers¹⁷. If an authorised person who enters any premises by virtue of this provision discloses to any person any information obtained on the premises with regard to any trade secret he is, unless the disclosure is made in the performance of his duty, guilty of an offence¹⁸. There are offences relating to obstructing and misleading a person carrying out observations¹⁹.

If the Secretary of State certifies that it appears to him requisite or expedient in the interests of national security that these powers of entry should not be exercisable in relation to any premises specified in the certificate, being premises held or used by or on behalf of the Crown, the powers are not exercisable in relation to those premises²⁰.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 I.e. under the Food Standards Act 1999 s 10: see PARA 241 ante.

3 Ibid s 11(1), (9). As to the power of the Agency to publish or disclose information obtained through observations see PARA 248 post.

4 Ibid s 11(2).

5 Ibid s 11(3).

6 Ibid s 11(4).

7 For the meaning of 'premises' see PARA 204 note 16 ante; definition applied by ibid s 36(4). For these purposes, 'premises' does not include a private dwelling-house: s 11(4). As to the power of the Secretary of State to restrict or prohibit the exercise of the powers of entry in the interests of national security see the text to note 20 infra. As to the Secretary of State see PARA 224 ante.

8 Ibid s 11(4)(a).

- 9 For the meaning of 'article' see PARA 201 note 3 ante; definition applied by *ibid* s 36(4).
- 10 For the meaning of 'substance' see PARA 201 note 4 ante; definition applied by *ibid* s 36(4).
- 11 *Ibid* s 11(4)(b).
- 12 For the meaning of 'food' see PARA 201 ante; definition applied by *ibid* s 36(4). For the meaning of 'food source' see PARA 201 ante; definition applied by s 36(4).
- 13 *Ibid* s 11(4)(c).
- 14 For the meaning of 'business' see PARA 201 note 3 ante; definition applied by *ibid* s 36(4).
- 15 *Ibid* s 11(4)(d). The references in heads (4) and (5) in the text to records include any records which: (1) relate to the health of any person who is or has been employed in the business concerned; and (2) were created for the purpose of assessing, or are kept for the purpose of recording, matters affecting his suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if he comes into contact with any food or food source): s 11(6).
- 16 *Ibid* s 11(4)(e).
- 17 *Ibid* s 11(5).
- 18 *Ibid* s 11(7). He is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 11(7). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65; and amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 42); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.
- 19 See PARA 271 post.
- 20 Food Standards Act 1999 s 38(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

242 Power of entry and sampling

NOTE 18--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/243. Power to monitor enforcement action.

243. Power to monitor enforcement action.

The Food Standards Agency¹ has the function² of monitoring the performance of enforcement authorities³ in enforcing relevant legislation⁴. That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant legislation⁵. Each annual report⁶ of the Agency must contain a report on its activities during the year in enforcing any relevant legislation for which it is the enforcement authority and its performance in respect of: (1) any standards of performance⁸ that apply to those activities⁹; and (2) any objectives relating to those activities that are specified in the statement of objectives and practices¹⁰. The Agency may make a report to any other enforcement authority on its performance in enforcing any relevant legislation, and such a report may include guidance as to action which the Agency considers would improve that performance¹¹. The Agency may direct an authority to which such a report has been made: (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report¹²; and (b) within such period as may be so specified to notify the Agency of what action it has taken or proposes to take in response to the report¹³.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

3 For the purposes of *ibid* ss 12-14 (see PARAS 244-245 post), 'enforcement authority' means: (1) in the case of provisions of the Food Safety Act 1990 or regulations or orders made under it, the authority by whom they are to be enforced (including a Minister of the Crown, the National Assembly for Wales, the Scottish Ministers or the Agency itself if, by virtue of s 6(3) (as amended) (see PARA 252 post) or s 6(4) (as amended) (see PARA 252 post), that authority is the enforcement authority in relation to those provisions); (2) in the case of provisions of the Food Safety (Northern Ireland) Order 1991, SI 1991/762 (as amended), and regulations or orders made under it, the authority by whom they are to be enforced (including a Northern Ireland Department or the Agency itself if, by virtue of the Order, it is the enforcement authority in relation to those provisions); and (3) in the case of provisions of the Agriculture Act 1970 Pt IV (ss 66-87) (as amended) (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 941 et seq) (or regulations made under it), an authority mentioned in s 67 (as amended): Food Standards Act 1999 s 15(2). Any reference in the Food Safety Act 1990 to regulations or orders made under it is to be construed as a reference to regulations or orders made under the Food Safety Act 1990 by the Secretary of State: s 53(3) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100. As to the Secretary of State see PARA 224 ante.

4 Food Standards Act 1999 s 12(1). 'Enforcement', in relation to relevant legislation, includes the execution of any provisions of that legislation: s 15(2). 'Relevant legislation' means: (1) the provisions of the Food Safety Act 1990 and regulations or orders made under it; (2) the provisions of the Food Safety (Northern Ireland) Order 1991, SI 1991/762 (as amended), and regulations or orders made under it; and (3) the provisions of the Agriculture Act 1970 Pt IV (as amended) and regulations made under it, so far as relating to matters connected with animal feedingstuffs: Food Standards Act 1999 s 15(1). For the meaning of 'animal' see PARA 236 note 3 ante. For the meaning of 'animal feedingstuff' see PARA 236 note 3 ante.

Any reference in ss 12-14 (see PARAS 244-245 post) however expressed to the performance of an enforcement authority in enforcing any relevant legislation includes a reference to the capacity of that authority to enforce it: s 15(3).

5 *Ibid* s 12(2).

- 6 As to the annual report see PARA 231 ante.
- 7 Food Standards Act 1999 s 12(3).
- 8 le under ibid s 12(2): see the text to note 5 supra.
- 9 Ibid s 12(3)(a).
- 10 Ibid s 12(3)(b). The statement of objectives and practices is under s 22: see PARA 237 ante.
- 11 Ibid s 12(4).
- 12 Ibid s 12(5)(a).
- 13 Ibid s 12(5)(b).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/244. Power to request information relating to enforcement action.

244. Power to request information relating to enforcement action.

For the purpose of carrying out its function¹ of monitoring of enforcement action² in relation to any enforcement authority³ the Food Standards Agency⁴ may require⁵ the enforcement authority or any member, officer⁶ or employee of the authority⁷, or a person subject to any duty under relevant legislation⁸ (being a duty enforceable by an enforcement authority) or any officer or employee of such a person⁹: (1) to provide the Agency with any information which it has reasonable cause to believe that person is able to give¹⁰; or (2) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within his control (and, if they are kept in computerised form, to make them available in a legible form)¹¹.

A person who fails without reasonable excuse to comply with any requirement so imposed or in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular, is guilty of an offence¹².

¹ For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by the Food Standards Act 1999 s 36(4).

² See under the Food Standards Act 1999 s 12: see PARA 243 ante. For the meaning of 'enforcement' see PARA 243 note 4 ante.

³ For the meaning of 'enforcement authority' see PARA 243 note 2 ante.

⁴ As to the establishment of the Food Standards Agency see PARA 225 ante.

⁵ Food Standards Act 1999 s 13(1).

⁶ 'Officer' includes servant: Food Safety Act 1990 s 53(1); definition applied by the Food Standards Act 1999 s 36(4).

⁷ Ibid s 13(2)(a).

⁸ For the meaning of 'relevant legislation' see PARA 243 note 4 ante.

⁹ Food Standards Act 1999 s 13(2)(b).

¹⁰ Ibid s 13(1)(a).

¹¹ Ibid s 13(1)(b). The Agency may copy any records made available to it in pursuance of a requirement under head (2) in the text: s 13(3).

¹² See ibid s 16(1). He is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 16(2). As to the standard scale see PARA 242 note 18 ante.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the

Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/245. Power of entry for persons monitoring enforcement action.

245. Power of entry for persons monitoring enforcement action.

The Food Standards Agency¹ may authorise any individual (whether a member of its staff or otherwise) to²:

- 56 (1) enter (a) any premises³ occupied by the enforcement authority⁴; (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation⁵ has been carried out for the enforcement authority⁶; and (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable⁷, at any reasonable hour in order to inspect the premises or anything which may be found on them⁸;
- 57 (2) take samples of any articles⁹ or substances¹⁰ found on such premises¹¹;
- 58 (3) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form)¹²;
- 59 (4) require any person present on such premises to provide him with such facilities, such records or information and such other assistance as he may reasonably request¹³,

for the purpose of carrying out its function¹⁴ of monitoring of enforcement action¹⁵ in relation to any enforcement authority¹⁶. No such authorisation may be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency¹⁷. An authorisation must be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation)¹⁸. An authorised person must on request produce his authorisation before exercising any powers under heads (1) to (4) above, and provide a document identifying any sample taken, or documents copied, under those powers¹⁹.

If a person who enters any premises²⁰ discloses to any person any information obtained on the premises with regard to any trade secret he is, unless the disclosure is made in the performance of his duty, guilty of an offence²¹. There are also offences relating to obstructing and misleading a person carrying out observations²².

If the Secretary of State²³ certifies that it appears to him requisite or expedient in the interests of national security that these powers of entry should not be exercisable in relation to any premises specified in the certificate, being premises held or used by or on behalf of the Crown, the powers are not exercisable in relation to those premises²⁴.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 14(1).

3 The power to enter premises conferred on an authorised person includes power to take with him any other person he may consider appropriate: *ibid* s 14(6). For the meaning of 'premises' see PARA 242 note 7 ante; definition applied by s 36(4).

4 *Ibid* s 14(5)(a). For the meaning of 'enforcement authority' see PARA 243 note 3 ante. Where (1) the enforcement authority in relation to any provisions of the Food Safety Act 1990 or orders or regulations made

under it is (by virtue of s 6(3) (as amended) or s 6(4) (as amended) (see PARA 252 ante)) a Minister of the Crown, the National Assembly for Wales, the Scottish Ministers or the Agency; or (2) the enforcement authority in relation to any provisions of the Food Safety (Northern Ireland) Order 1991, SI 1991/762 (as amended), or orders or regulations made under it is (by virtue of art 26(1A), (1B), (2), (3) or (3A) (art 26(1A), (1B), (3A) as added)) a Northern Ireland Department or the Agency, the Food Standards Act 1999 s 14 applies to that authority (in relation to its performance in enforcing those provisions) with the omission of the s 14(5)(a): s 14(9). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100. As to regulations or orders made under the Food Safety Act 1990 see PARA 243 note 3 ante.

5 For the meaning of 'enforcement' see PARA 243 note 4 ante. For the meaning of 'relevant legislation' see PARA 243 note 4 ante.

6 Food Standards Act 1999 s 14(5)(b).

7 Ibid s 14(5)(c).

8 Ibid s 14(4)(a).

9 For the meaning of 'article' see PARA 201 note 3 ante; definition applied by ibid s 36(4).

10 For the meaning of 'substance' see PARA 201 note 4 ante; definition applied by ibid s 36(4).

11 Ibid s 14(4)(b).

12 Ibid s 14(4)(c).

13 Ibid s 14(4)(d).

14 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by ibid s 36(4).

15 Ie under ibid s 12: see PARA 243 ante.

16 Ibid s 14(1), (10).

17 Ibid s 14(2).

18 Ibid s 14(3).

19 Ibid s 14(7).

20 Ie by virtue of ibid s 14: see the text to notes 1-19 supra.

21 Ibid s 14(8). He is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 14(8). As to the standard scale see PARA 242 note 18 ante.

22 See PARA 271 post.

23 As to the Secretary of State see PARA 224 ante.

24 Food Standards Act 1999 s 38(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/246. Power to give directions relating to breach of duty or to international obligations.

246. Power to give directions relating to breach of duty or to international obligations.

If it appears to the Secretary of State¹ that there has been a serious failure by the Food Standards Agency²: (1) to comply with the provisions relating to the consideration of objectives, risks, costs and benefits³; or (2) to perform any other duty which he considers should have been performed by it, he may give the Agency such directions as he may consider appropriate for remedying that failure⁴. Such directions must include a statement summarising the reasons for giving them⁵.

The Secretary of State may also give the Agency such directions as he considers appropriate for the implementation of: (a) any obligations of the United Kingdom⁶ under the Community Treaties; or (b) any international agreement to which the United Kingdom is a party⁷.

An authority proposing to give any of the above directions must consult the Agency and the other appropriate authorities⁸ before doing so⁹, and any directions given must be published in such manner as the authority giving them considers appropriate for the purpose of bringing the matters to which they relate to the attention of persons likely to be affected by them¹⁰.

If the Agency fails to comply with any of the above directions, the authority giving the directions may give effect to them (and for that purpose may exercise any power of the Agency)¹¹. If the Agency fails to comply with directions made by the Secretary of State, the Secretary of State may, with the agreement of the other appropriate authorities, remove all the members of the Agency from office (and, until new appointments are made, may carry out the Agency's functions¹² himself or appoint any other person or persons to do so)¹³.

1 As to the Secretary of State see PARA 224 ante.

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 Ie the provisions of the Food Standards Act 1999 s 23(1), (2): see PARA 238 ante.

4 Ibid s 24(1). This power may also be exercised: (1) so far as it is exercisable in relation to Wales, by the National Assembly for Wales; (2) by the Scottish Ministers (in so far as it is exercisable by them within devolved competence or by virtue of an Order in Council made under the Scotland Act 1998 s 63); and (3) so far as it is exercisable in relation to Northern Ireland, by the Department of Health and Social Services for Northern Ireland: Food Standards Act 1999 s 24(2). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante.

5 Food Standards Act 1999 s 24(3).

6 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

7 Food Standards Act 1999 s 24(4). This power may also be exercised: (1) by the National Assembly for Wales (in relation to implementation for which it is responsible); (2) by the Scottish Ministers (in relation to implementation within devolved competence or for which they have responsibility by virtue of an Order in Council under the Scotland Act 1998 s 63); and (3) by the Department of Health and Social Services for Northern Ireland (in relation to implementation for which a Northern Ireland Department is responsible): Food Standards Act 1999 s 24(5). As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

8 For the meaning of 'appropriate authorities' see PARA 226 note 5 ante.

9 Food Standards Act 1999 s 24(6).

10 Ibid s 24(9).

11 Ibid s 24(7).

12 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by ibid s 36(4).

13 Ibid s 24(8).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/247. Power to make emergency orders.

247. Power to make emergency orders.

Arrangements may be made between the Secretary of State¹ and the Food Standards Agency² authorising the Agency to exercise on behalf of the Secretary of State the power to make emergency orders³ and emergency control orders⁴. The authority given by any such arrangements is subject to any limitations and conditions provided for in the arrangements⁵. Where by virtue of any such arrangements the Agency is authorised to exercise a power, anything done or omitted to be done by the Agency in the exercise or purported exercise of the power must be treated as done or omitted by the Secretary of State⁶. Nothing in any such arrangements prevents the Secretary of State exercising any power⁷.

1 As to the Secretary of State see PARA 224 ante.

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 See under the Food and Environment Protection Act 1985 s 1(1) (as amended) (emergency orders): see PARA 316 post.

4 Food Standards Act 1999 s 17(1). The text refers to emergency control orders under the Food Safety Act 1990 s 13(1) (as amended): see PARA 288 post.

The Food Standards Act 1999 s 17(5) applies with the necessary modifications: (1) to any power mentioned in s 17(1) so far as it is exercisable by the National Assembly for Wales or the Scottish Ministers; and (2) to the power of a Northern Ireland Department to make orders under the Food and Environment Protection Act 1985 s 1(1) (as amended) (see PARA 316 post) or the Food Safety (Northern Ireland) Order 1991, SI 1991/762, art 12(1), as it applies to a power exercisable by the Secretary of State: Food Standards Act 1999 s 17(5). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

5 Food Standards Act 1999 s 17(2).

6 Ibid s 17(3).

7 Ibid s 17(4).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/248. Power to publish advice and information.

248. Power to publish advice and information.

The Food Standards Agency¹ may publish in such manner as it thinks fit: (1) any advice given in respect of the development of food policies², matters connected with food safety or other interests of consumers in relation to food³, and matters connected with the safety of animal feedingstuffs and other interests of users of animal feedingstuffs⁴ (including advice given in pursuance of a request by a Minister of the Crown or government department, the National Assembly of Wales, the Scottish Ministers or a Northern Ireland Department⁵); (2) any information obtained through observations⁶ or monitoring of enforcement action⁷; and (3) any other information in its possession (whatever its source)⁸.

The exercise of this power is subject to the requirements of the Data Protection Act 1998⁹. The power may not be exercised if the publication by the Agency of the advice or information in question is prohibited by an enactment¹⁰, is incompatible with any European Community obligation, or would constitute or be punishable as a contempt of court¹¹. Before deciding to exercise the power, the Agency must consider whether the public interest in the publication of the advice or information in question is outweighed by any considerations of confidentiality attaching to it¹².

Except as so mentioned above, the power to publish advice and information under heads (1) to (3) above is exercisable free from any prohibition on publication that would otherwise apply¹³.

The Agency may also disclose to another public authority any advice or information mentioned in heads (1) to (3) above¹⁴.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Ie under the Food Standards Act 1999 s 6: see PARA 235 ante.

3 Ie under *ibid* s 7: see PARA 235 ante.

4 Ie under *ibid* s 9: see PARA 236 ante.

5 Ie under *ibid* s 6(2): see PARA 236 note 5 ante. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante. As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

6 Ie under the Food Standards Act 1999 s 10: see PARA 241 ante.

7 Ie under *ibid* s 12: see PARA 243 ante.

8 *Ibid* s 19(1).

9 *Ibid* s 19(2). As to the requirements of the Data Protection Act 1998 see CONFIDENCE AND DATA PROTECTION.

10 'Enactment' means an enactment contained in, or in subordinate legislation made under, any Act, Act of the Scottish Parliament or Northern Ireland legislation: Food Standards Act 1999 s 19(8). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

If it appears to the Secretary of State that an enactment prohibits the disclosure of any information and is capable of having either: (1) the effect that the enactment in question prevents the disclosure to the Agency of information that would facilitate the carrying out of the Agency's functions; or (2) having the effect that the enactment in question prevents the publication by the Agency of information in circumstances where the power under the Food Standards Act 1999 s 19 would otherwise be exercisable, he may by order make provision for

the purpose of removing or relaxing the prohibition so far as it is capable of having that effect: s 25(1), (5). For the purposes of s 25, 'enactment' means an enactment contained in any Act (other than the Food Standards Act 1999) or Northern Ireland legislation passed or made before or in the same Session as the Act: s 25(8). As to the Secretary of State see PARA 224 ante. An order under s 25 may: (a) make provision as to circumstances in which information which is subject to the prohibition in question may, or may not, be disclosed to the Agency or, as the case may be, published by the Agency; and (b) if it makes provision enabling the disclosure of information to the Agency, make provision restricting the purposes for which such information may be used (including restrictions on the subsequent disclosure of the information by the Agency): s 25(6). Similar provision is made in relation to Scotland and Northern Ireland: see s 25(2)-(4), (7).

11 Ibid s 19(3).

12 Ibid s 19(4). Where the advice or information relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing relevant legislation, s 19(4) applies only so far as the advice or information relates to a person other than an enforcement authority, or a member, officer or employee of an enforcement authority acting in his capacity as such: s 19(5). For the meaning of 'enforcement authority' see PARA 243 note 3 ante; definition applied by s 19(6). For the meaning of 'relevant legislation' see PARA 243 note 4 ante; definition applied by s 19(6). For the meaning of 'officer' see PARA 244 note 6 ante; definition applied by s 36(4).

13 Ibid s 19(7).

14 Ibid s 19(9). Section 19(1)-(8) (see the text and notes 1-13 supra) applies in relation to disclosure under s 19(9) as it applies in relation to publication under s 19(1) (see the text and notes 1-8 supra): see s 19(9).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/249. Powers in relation to food-borne diseases and food-borne zoonoses.

249. Powers in relation to food-borne diseases and food-borne zoonoses.

The Food Standards Agency¹ may issue general guidance to local authorities or other public authorities on matters connected with the management of outbreaks or suspected outbreaks of food-borne disease².

The Agency must make arrangements with a view to securing that any information relating to food-borne zoonoses is furnished or made available to other authorities³.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 See the Food Standards Act 1999 s 20; and PARA 290 post.

3 See *ibid* s 28; and PARA 292 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iii) Food Standards Agency/C. POWERS/250. Incidental powers.

250. Incidental powers.

The Food Standards Agency¹ has power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of its functions². This includes power³: (1) to carry on educational or training activities⁴; (2) to give financial or other support to activities carried on by others⁵; (3) to acquire or dispose of any property or rights⁶; and (4) to institute criminal proceedings in England and Wales and in Northern Ireland⁷. The Agency may make charges for facilities or services provided by it at the request of any person⁸.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 21(1). For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by s 36(4).

3 See *ibid* s 21(2), which is without prejudice to the generality of s 21(1) (see the text to note 2 supra).

4 *Ibid* s 21(2)(a).

5 *Ibid* s 21(2)(b).

6 *Ibid* s 21(2)(c).

7 *Ibid* s 21(2)(d).

8 *Ibid* s 21(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/251. Meaning of 'food authority'.

(iv) Food Authorities

251. Meaning of 'food authority'.

The duty of administering many of the provisions of the Food Safety Act 1990 and regulations and orders made under it is imposed in the first instance on local authorities known as food authorities. The food authorities are: (1) in relation to England (a) as respects each London borough, district or non-metropolitan county, the council of that borough, district or county, (b) as respects the City of London, the Common Council of the City of London¹, (c) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer², (d) as respects the Isles of Scilly, the council of the Isles of Scilly³; and (2) in relation to Wales, as respects each county or county borough, the council of that county or county borough⁴.

The Secretary of State⁵ may by order provide, either generally or in relation to cases of a particular description, that any functions⁶ under the Food Safety Act 1990 which are exercisable concurrently (i) as respects a non-metropolitan district, by the council of that district and the council of the non-metropolitan county; and (ii) as respects the Inner Temple or the Middle Temple, by the appropriate Treasurer and the Common Council of the City of London, may be exercisable solely by such one of those authorities as may be specified in the order⁷. This means that in non-metropolitan counties, both the district council and the county council are food authorities unless an order is made by the Secretary of State to the effect that only one of them is to exercise some or all of the functions of a food authority. Where unitary authorities have replaced the structure of county council and district council in non-metropolitan counties, the food authority is the council of the unitary authority⁸.

The following may also be a food authority where functions under the Food Safety Act 1990 are assigned: (A) a port health authority⁹; (B) a joint board for a united district¹⁰; and (C) a single authority for a metropolitan county¹¹.

1 Note that head (1)(b) in the text refers to the City of London including the Temples, but cf head (1)(c) in the text. As to the Common Council of the City of London see LONDON GOVERNMENT.

2 'The appropriate Treasurer' means the Sub-Treasurer in relation to the Inner Temple and the Under Treasurer in relation to the Middle Temple: Food Safety Act 1990 s 5(5).

3 Ibid s 5(1) (amended by the Local Government (Wales) Act 1994 ss 22(3), 66(8), Sch 9 para 16(1), Sch 18; and the Food Standards Act 1999 s 40(1), Sch 5 para 9), which is expressed to be subject to the Food Safety Act 1990 s 5(3), (4) (as amended) (see the text to notes 7, 11 infra).

4 Food Safety Act 1990 s 5(1A) (added by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 16(1)), which is expressed to be subject to s 5(3)(a), (b) (see the text to note 11 infra). Where any provision made under the Local Government (Wales) Act 1994 provides for the exclusion of either a district council or a county council from references to a food authority, that exclusion will have no effect in relation to a food authority in Wales: Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996, SI 1996/525, art 2(1).

5 As to the Secretary of State see PARA 224 ante.

6 For the meaning of 'functions' see PARA 225 note 1 ante.

7 Food Safety Act 1990 s 5(4) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). Further recommendations as to the allocation of responsibilities between counties and districts are made by Code of Practice No 1.

8 This is by virtue of orders made under the Local Government Act 1992 s 19 (as amended) and s 26; and the Local Government Changes for England Regulations 1994, SI 1994/867 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 56.

9 le by an order under the Public Health (Control of Disease) Act 1984 s 2 or s 7 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 102-103.

10 le by an order under the Public Health Act 1936 s 6 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101.

11 Food Safety Act 1990 s 5(3). The text refers to a single authority for a metropolitan county by an order under the Local Government Act 1985 s 16, Sch 8 para 15(6) (as amended): see generally LOCAL GOVERNMENT vol 69 (2009) PARA 17. Any reference in the Food Safety Act 1990 to a food authority is to be construed, so far as relating to functions which are assigned, as a reference to the authority to whom they are so assigned: s 5(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/252. Duties.

252. Duties.

Every food authority¹ must enforce and execute within its area the provisions of the Food Safety Act 1990 with respect to which the duty is not imposed expressly or by necessary implication on some other authority². However, the Secretary of State³ may direct, in relation to cases of a particular description or a particular case, that any duty imposed on food authorities is to be discharged by the Secretary of State, the Minister of Agriculture, Fisheries and Food⁴ or the Food Standards Agency⁵ and not by those authorities⁶.

Regulations or orders under the Food Safety Act 1990 must specify which of the following authorities are to enforce and execute them, either generally or in relation to cases of a particular description or a particular area, namely: (1) the Minister, the Secretary of State, the Agency, food authorities and such other authorities as are so mentioned above; and (2) in the case of regulations, the Commissioners of Customs and Excise⁷, and any such regulations or orders may provide for the giving of assistance and information, by any authority concerned in the administration of the regulations or orders, or of any provisions of the Food Safety Act 1990, to any other authority so concerned, for the purposes of their respective duties under them⁸.

Every food authority is under a duty to appoint one or more persons to act as public analysts for the purposes of the Food Safety Act 1990 within the authority's area⁹.

1 For the meaning of 'food authority' see PARA 268 note 1 ante.

2 Food Safety Act 1990 s 6(2).

3 As to the Secretary of State see PARA 224 ante.

4 As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

5 As to the establishment of the Food Standards Agency see PARA 225 ante.

6 Food Safety Act 1990 s 6(3) (amended by the Food Standards Act 1999 s 40(1), Sch 5 para 10).

7 As to the Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

8 Food Safety Act 1990 s 6(4) (amended by the Food Standards Act 1999 s 40(4), Sch 5 para 10, Sch 6; and the Deregulation and Contracting Out Act 1994 s 31, Sch 9 para 6). Numerous regulations have been made in exercise of the power under the Food Safety Act 1990 s 6 (as amended) and are set out elsewhere in this title.

9 See the Food Safety Act 1990 27(1) (as amended); and PARAS 268-269 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/253. Authorised officers in relation to food authorities.

253. Authorised officers in relation to food authorities.

An 'authorised officer', in relation to a food authority¹, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Food Safety Act 1990². However, if regulations made by the Secretary of State³ so provide, no person may be so authorised unless he has such qualifications as may be prescribed by the regulations⁴.

1 For the meaning of 'food authority' see PARA 268 note 1 ante.

2 Food Safety Act 1990 s 5(6).

3 As to the Secretary of State see PARA 224 ante.

4 Food Safety Act 1990 s 5(6) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). The Authorised Officers (Meat Inspection) Regulations 1987, SI 1987/133 (amended by SI 1990/2486), prescribe the qualifications for meat inspectors. As to the protection of authorised officers see PARA 272 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/254. Provision of food hygiene training.

254. Provision of food hygiene training.

A food authority¹ may provide, whether within or outside its area, training courses in food² hygiene for persons who are or intend to become involved in food businesses³, whether as proprietors⁴ or employees or otherwise⁵. A food authority may contribute towards the expenses incurred⁶ by any other such authority, or towards expenses incurred by any other person in providing, such courses⁷.

1 For the meaning of 'food authority' see PARA 268 note 1 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 For the meaning of 'food business' see PARA 241 note 11 ante.

4 For the meaning of 'proprietor' see PARA 285 note 2 post.

5 Food Safety Act 1990 s 23(1).

6 ie incurred under *ibid* s 23.

7 *Ibid* s 23(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/255. Provision of facilities for cleansing shellfish.

255. Provision of facilities for cleansing shellfish.

A food authority¹ may provide, whether within or outside its area, tanks or other apparatus for cleansing² shellfish³. A food authority may contribute towards the expenses incurred⁴ by any other such authority, or towards expenses incurred by any other person in providing, and making available to the public, tanks or other apparatus for cleansing shellfish⁵.

This does not authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions as may be approved by the Secretary of State⁶ before the work is commenced⁷.

1 For the meaning of 'food authority' see PARA 251 ante.

2 'Cleansing', in relation to shellfish, includes subjecting them to any germicidal treatment: Food Safety Act 1990 s 24(4).

3 Ibid s 24(1).

4 ie incurred under ibid s 24.

5 Ibid s 24(2).

6 As to the Secretary of State see PARA 224 ante.

7 Food Safety Act 1990 s 24(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/256. Compliance with codes of practice.

256. Compliance with codes of practice.

For the guidance of food authorities¹, the Secretary of State² may issue codes of recommended practice as regards the execution and enforcement of the Food Safety Act 1990 and of provisions made under it³. Before issuing any code⁴, the Secretary of State must consult with such organisations as appear to him to be representative of interests likely to be substantially affected by the code, and have regard to any relevant advice given by the Food Standards Agency⁵. If it appears to the Secretary of State that the Agency has undertaken any consultation with an organisation that he is required to consult⁶, the Secretary of State may treat that consultation as being as effective⁷ as if undertaken by him⁸. Any such code must be laid before Parliament after being issued⁹.

The Agency may, after consulting the Secretary of State, give a food authority a direction requiring it to take any specified steps in order to comply with a code of practice¹⁰. Any such direction is enforceable by mandamus, on the application of the Agency¹¹.

In the exercise of its functions¹², every food authority must have regard to any relevant provision of any such code, and must comply with any direction which is given¹³ and requires them to take any specified steps in order to comply with such a code¹⁴.

1 For the meaning of 'food authority' see PARA 251 ante.

2 As to the Secretary of State see PARA 224 ante.

3 Food Safety Act 1990 s 40(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). Numerous codes have been issued: see eg Code of Practice No 8: Food Standards Inspections (1991). Notice authorised or required by a code of practice issued under the Food Safety Act 1990 s 40(1) (as amended) to be given for the purposes of informing a person that a detention of food notice is withdrawn or that an authorised officer intends to have food dealt with by a justice of the peace must be made in the form specified in the Detention of Food (Prescribed Forms) Regulations 1990, SI 1990/2614: see reg 2, Schedule. As to the detention of food see PARA 284 post.

4 *Ie* under the Food Safety Act 1990 s 40 (as amended).

5 *Ibid* s 40(4) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8, 17(1), (6), Sch 6). As to the establishment of the Food Standards Agency see PARA 225 ante.

6 *Ie* under the Food Safety Act 1990 s 40(4) (as amended): see the text and note 5 supra.

7 *Ie* for the purposes of *ibid* s 40(4) (as amended): see the text and note 5 supra.

8 *Ibid* s 40(4A) (added by the Food Standards Act 1999 Sch 5 para 17(1), (7)). Any consultation undertaken before the commencement of the Food Safety Act 1990 s 40(4) (*ie* 1 December 1990) is as effective as if undertaken after that commencement: s 40(5); Food Safety Act 1990 (Commencement No 2) Order 1990, SI 1990/2372.

9 Food Safety Act 1990 s 40(1) (as amended: see note 3 supra).

10 *Ibid* s 40(1A) (added by the Food Standards Act 1999 Sch 5 para 17(1), (2)).

11 Food Safety Act 1990 s 40(3) (amended by the Food Standards Act 1999 Sch 5 para 17(1), (4)). The Agency must consult the Secretary of State before making such an application: Food Safety Act 1990 s 40(3A) (added by the Food Standards Act 1999 Sch 5 para 17(1), (5)). As to mandamus see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

12 *Ie* the functions conferred by or under the Food Safety Act 1990.

13 le given under *ibid* s 40 (as amended).

14 *Ibid* s 40(2) (amended by the Food Standards Act 1999 Sch 5 para 17(1), (3)).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

256 Compliance with codes of practice

NOTES--Food Safety Act 1990 s 40(4) amended: Food Safety Act 1990 (Amendment) Regulations 2004, SI 2004/2990.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/257. Duty to submit reports and returns.

257. Duty to submit reports and returns.

Every food authority¹ is required to send to the Secretary of State² or to the Food Standards Agency³ such reports and returns, and give him or it such information, with respect to the exercise of the functions conferred on them by or under the Food Safety Act 1990 as he or it may require⁴.

1 For the meaning of 'food authority' see PARA 251 ante.

2 As to the Secretary of State see PARA 224 ante.

3 As to the establishment of the Food Standards Agency see PARA 225 ante.

4 Food Safety Act 1990 s 41 (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 18).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/258. Defaulting authorities.

258. Defaulting authorities.

The performance of food authorities¹ is monitored by the Food Standards Agency². Any direction given by the Agency requiring food authorities to take specified steps in order to comply with a code of practice is enforceable by mandamus³. The duty to appoint a public analyst⁴ may also be enforced by mandamus⁵.

It appears that there are no other means of compelling a food authority to order its officers to take samples of any particular article, or to perform any of its other duties under the Food Safety Act 1990⁶.

However, where the Secretary of State is satisfied that a food authority has failed to discharge any duty imposed by or under the Food Safety Act 1990, and that this failure affects the general interests of consumers of food⁷, he may by order empower another food authority or the Agency (the 'substitute authority'), or a person (whether or not an officer of his) who is authorised by him in writing to do so, to discharge that duty in place of the authority in default⁸. If regulations made by the Secretary of State so provide, no person may be so authorised unless he has such qualifications as may be prescribed by the regulations⁹. For the purpose of determining whether the power so conferred is exercisable, the Secretary of State may cause a local inquiry to be held¹⁰.

The substituted authority or the Secretary of State may recover from the authority in default any expenses it or he reasonably incurs, and for the purpose of paying any such amount the authority in default may: (1) raise money as if the expenses had been incurred directly by them as a local authority; and (2) if and to the extent that they are authorised to do so by the Secretary of State, borrow money in accordance with the statutory provisions relating to borrowing by a local authority¹¹.

1 For the meaning of 'food authority' see PARA 251 ante.

2 As to monitoring by the Food Standards Agency see PARA 243 ante. As to the establishment of the Food Standards Agency see PARA 225 ante.

3 Food Safety Act 1990 s 40(3) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 17). As to codes of practice issued by the Secretary of State see generally s 40; and PARA 256 ante. As to the Secretary of State see PARA 224 ante. As to mandamus see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

4 See PARA 268 post.

5 *R v Leicester Union* [1899] 2 QB 632. It is doubtful whether a mandamus would be granted to compel a food authority to make due use of its general powers of enforcement, as the Secretary of State has a more simple remedy placed in his hands by the Food Safety Act 1990 s 42(1) (as amended): see *Pasmore v Oswaldtwistle UDC* [1898] AC 387, HL. As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

6 See, however, *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, CA; *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA, where it was held that police officers in certain circumstances could be compelled to perform statutory duties.

7 For the meaning of 'food' see PARA 201 ante.

8 Food Safety Act 1990 s 42(1) (amended by Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 19; and the Deregulation and Contracting Out Act 1994 s 76, Sch 16, PARA 17). This does not affect any other power exercisable by the Secretary of State regarding defaults of local authorities: Food Safety Act 1990 s 42(3) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8). As to default powers in the Public Health Act 1936

see s 322 (as amended), s 324 (as amended), s 325 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 64. Orders under the Food Safety Act 1990 s 42 (as amended), being local in nature, are not recorded in this work.

9 Ibid s 42(1) (as amended: see note 8 supra).

10 Ibid s 42(2) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8). Where the Secretary of State does so, the Local Government Act 1972 s 250(2)-(5) (s 250(2), (3), (4) as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies as if the inquiry were a local inquiry held under that Act: Food Safety Act 1990 s 42(2), (5).

11 Ibid s 42(4) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

258 Defaulting authorities

NOTE 3--Food Safety Act 1990 s 40(4) amended: Food Safety Act 1990 (Amendment) Regulations 2004, SI 2004/2990.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(iv) Food Authorities/259. Compulsory acquisition of land.

259. Compulsory acquisition of land.

A local authority may be authorised by the responsible minister¹ to purchase land² compulsorily for the purposes of the Food Act 1984³, and for the purposes of Part I of the Slaughterhouses Act 1974⁴, subject to certain qualifications⁵.

1 'The responsible Minister' in relation to the Food Act 1984 means the Secretary of State: see s 110. As to the Secretary of State see PARA 224 ante.

The 'Minister', in relation to the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended) means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales jointly: Slaughterhouses Act 1974 ss 34; Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 4(1), Sch 2. As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

2 For the purposes of the Food Act 1984, 'land' includes any interest in land and any easement or right in, to or over land: s 110(b). For the purposes of the Slaughterhouses Act 1974, 'land' has the same meaning as in the Public Health Act 1936 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 1): Slaughterhouses Act 1974 s 30(1).

3 Food Act 1984 s 110, which is expressed to be with exception for the purposes of s 50(1)(b) (amended by the Food Safety Act 1990 s 52, Sch 2 para 2). In relation to the compulsory purchase of land under s 110, the Acquisition of Land Act 1981 applies: Food Act 1990 s 110(a); and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

4 Ie the Slaughterhouses Act 1974 Pt I (as amended): see PARA 470 et seq post.

5 See ibid s 30(1), which is expressed to be with exception for the purposes of s 14 (as amended) (see PARA 473 post). In relation to the compulsory purchase of land under s 30 (as amended) the Acquisition of Land Act 1981 applies: Slaughterhouses Act 1974 s 30(2) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I); and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

259 Compulsory acquisition of land

NOTE 1--SI 1978/272 amended: SI 2010/630 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(1) ENFORCEMENT AUTHORITIES/(v) European Food Authority/260. European Food Authority.

(v) European Food Authority

260. European Food Authority.

The European Commission has adopted a White Paper on Food Safety¹ with the aim of achieving the highest possible level of health protection for the consumers of Europe's food². The White Paper proposes the establishment of an independent European Food Authority which would have the tasks of providing independent scientific advice on all aspects of food safety, the operation of rapid alert systems, communication and dialogue with consumers on food safety and health issues, as well as networking with national agencies and scientific bodies³. The European Food Authority will not replace national bodies, such as the Food Standards Agency⁴, which will retain responsibility for risk management, including legislation and control⁵.

In addition to the establishment of a European Food Authority, the White Paper proposes a new legal framework of food safety legislation, which will cover animal feed, animal health and welfare, hygiene, contaminants and residues, novel food, additives, flavourings, packaging and irradiation⁶.

1 See the *White Paper on Food Safety* (COM (1999) 719 final) (Brussels, 12 January 2000).

2 See the European Commission Press Release (Brussels, 12 January 2000).

3 See the *White Paper on Food Safety* (COM (1999) 719 final) (Brussels, 12 January 2000). It is anticipated that the European Food Authority could be in place by 2002.

4 As to the establishment of the Food Standards Agency see PARA 225 ante.

5 See the European Commission Press Release (Brussels, 12 January 2000). See also 349 HC Official Report (6th series), 3 May 2000, written answers col 175; and 614 HL Official Report (5th series), 23 June 2000, col 570.

6 See the *White Paper on Food Safety* (COM (1999) 719 final) (Brussels, 12 January 2000).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

260 European Food Authority

TEXT AND NOTES--See now European Parliament and EC Council Regulation 178/2002 (OJ L31, 1.2.2002, p 8) (as amended by European Parliament and EC Council Regulation 1642/2003 (OJ L245, 29.9.2003, p 4), European Parliament and EC Commission Regulation 575/2006 (OJ L100, 8.4.2006, p 3)), which lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety. See also EC Commission Regulation 1304/2003 (OJ L185, 24.7.2003, p 6) on the procedure applied by the European Food Safety Authority to requests for scientific opinions referred to it.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(2) POWERS OF ENTRY/261. Power to enter premises.

(2) POWERS OF ENTRY

261. Power to enter premises.

An authorised officer of an enforcement authority¹, on producing, if so required, some duly authenticated document² showing his authority, has a right at all reasonable hours³:

- 60 (1) to enter any premises⁴ within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention⁵ of the provisions of the Food Safety Act 1990, or of regulations or orders made under it⁶; and
- 61 (2) to enter any business⁷ premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that area of any of such provisions⁸; and
- 62 (3) in the case of an authorised officer of a food authority⁹, to enter any premises for the purpose of the performance by the authority of its functions¹⁰ under the Food Safety Act 1990¹¹.

However, admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier¹².

The first ground for entry (see head (1) above) is concerned with a general inspection and is a power only to be exercised within an authority's area. It is not confined to business premises. The second ground (see head (2) above) relates to the investigation of any offences and gives a power to enter premises outside the enforcement authority's area. It is not clear what additional power the third ground (see head (3) above) gives.

An authorised officer is not entitled to examine the 'due diligence' system of a food business as part of a general inspection since there is no obligation to have such a system under the Food Safety Act 1990 or under regulations or orders made under it. In contrast, when investigating whether or not an offence has been committed, an enforcement officer is permitted to examine the due diligence system because if there is such a system then if it has been properly implemented there may well be a defence¹³.

If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any premises for any such purpose and either: (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent, the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force¹⁴. Every warrant so granted is valid for a period of one month¹⁵.

An authorised officer entering any premises under these powers¹⁶ may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as he found them¹⁷.

An authorised officer entering premises under these powers¹⁸ may inspect any records (in whatever form they are held) relating to a food business¹⁹ and, where any such records are

kept by means of a computer: (i) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and (ii) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require²⁰. Any officer exercising any such power may: (A) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of the Food Safety Act 1990 or of regulations or orders made under it; and (B) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away²¹.

If any person who enters any premises²² discloses to any person any information obtained by him in the premises with regard to any trade secret, he is, unless the disclosure was made in the performance of his duty, guilty of an offence²³.

These powers do not, except with the permission of the local authority under the Animal Health Act 1981²⁴, authorise any person to enter any premises in which an animal²⁵ or bird affected with any disease to which that Act applies is kept, and which is situated in a place declared under that Act to be infected with such a disease²⁶.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 As to the form and authentication of documents see PARA 216 ante.

3 Food Safety Act 1990 s 32(1). What is a reasonable hour is a question of fact and depends on the circumstances of the particular case. Except in a case of extreme urgency, reasonable hours in relation to business premises which were open for business would ordinarily be the opening times of the business: see *Small v Bickley* (1875) 32 LT 726, 40 JP 119, DC; and *Davies v Winstanley* (1930) 144 LT 433, 95 JP 21.

4 For the meaning of 'premises' see PARA 204 note 16 ante.

5 For the meaning of 'contravention' see PARA 204 note 2 ante.

6 Food Safety Act 1990 s 32(1)(a). Head (1) in the text is concerned with entry for a general inspection and is a power only to be exercised within an authority's area. It is not confined to business premises.

7 For the meaning of 'business' see PARA 201 note 3 ante.

8 Food Safety Act 1990 s 32(1)(b). Head (2) in the text relates to the investigation of any offences and gives a power to enter premises outside the enforcement authority's area.

9 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante; and for the meaning of 'food authority' see PARA 251 ante.

10 For the meaning of 'functions' see PARA 225 note 1 ante.

11 Food Safety Act 1990 s 32(1)(c).

12 Ibid s 32(1). 'Occupier', in relation to any ship or aircraft of a description specified in an order made under s 1(3) (see PARA 204 ante) or any vehicle, stall or place, means the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place: s 53(1). For the meaning of 'ship' see PARA 204 note 16 ante.

13 *Walkers Snack Foods Ltd v Coventry City Council* [1998] 3 All ER 163, 96 LGR 517, DC. As to the defence of due diligence see PARA 465 post.

14 Food Safety Act 1990 s 32(2).

15 Ibid s 32(3). For the meaning of 'month' see PARA 237 note 14 ante.

16 Ie by virtue of ibid s 32, or of a warrant issued under it: see s 32(4).

17 Ibid s 32(4).

18 See note 16 supra.

19 For the meaning of 'food business' see PARA 241 note 11 ante.

20 Food Safety Act 1990 s 32(5).

21 Ibid s 32(6).

22 See note 16 supra.

23 Food Safety Act 1990 s 32(7). A person guilty of such an offence is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both: s 35(2), (3). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. As to penalties see PARA 468 post.

24 See ANIMALS vol 2 (2008) PARA 1096.

25 For the meaning of 'animal' see PARA 201 note 3 ante.

26 Food Safety Act 1990 s 32(8).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/262. Procurement of samples.

(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS

262. Procurement of samples.

An authorised officer of an enforcement authority¹ may: (1) purchase a sample of any food², or any substance³ capable of being used in the preparation⁴ of food; (2) take a sample of any food, or any such substance, which (a) appears to him to be intended for sale⁵, or to have been sold, for human consumption⁶; or (b) is found by him on or in any premises which he is authorised to enter⁷; (3) take a sample from any food source⁸, or a sample of any contact material⁹, which is found by him on or in any such premises; and (4) take a sample of any article¹⁰ or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of the Food Safety Act 1990 or of regulations or orders made under it¹¹.

It has been held under previous legislation that an authorised officer may purchase or take samples using an agent or assistant, and this appears to remain valid under the Food Safety Act 1990¹². Food handed to an authorised officer is not a sample because it has not been taken or purchased in accordance with this power¹³. The sample must be dealt with in accordance with regulations¹⁴.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 For the meaning of 'substance' see PARA 201 note 4 ante.

4 For the meaning of 'preparation' see PARA 201 note 3 ante.

5 A 'sale' of food is deemed to include: (1) the supply of food, otherwise than on sale, in the course of a business; and (2) any other thing which is done with respect to food and is specified in an order made by the Secretary of State: Food Safety Act 1990 s 2(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). At the date at which this volume states the law no such order had been made. The Food Safety Act 1990 also applies in relation to: (a) any food which is offered as a prize or reward or is given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment; (b) any food which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or is given away, as if the food were, or had been, exposed for sale by the person offering it or giving it away; and (c) any food which is exposed or deposited in any premises for the purposes of being so offered or given away as mentioned in head (a) or head (b) supra, as if the food were, or had been, exposed for sale by the occupier of the premises: s 2(2). 'Entertainment' includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill: s 2(2). For the meaning of 'advertisement' see PARA 225 note 5 ante; and for the meaning of 'occupier' see PARA 261 note 12 ante. As to the Secretary of State see PARA 224 ante.

6 For the meaning of 'human consumption' see PARA 201 note 3 ante.

7 ie by or under the Food Safety Act 1990 s 32: see PARA 261 ante.

8 For the meaning of 'food source' see PARA 201 ante.

9 For the meaning of 'contact material' see PARA 241 note 11 ante.

10 For the meaning of 'article' see PARA 201 note 3 ante.

11 Food Safety Act 1990 s 29.

12 See *Horder v Scott* (1880) 5 QBD 552, 49 LJMC 78, DC; *Stace v Smith* (1880) 45 JP 141; *Farley v Higginbotham* (1898) 42 Sol Jo 309, DC; and *Tyler v Dairy Supply Co Ltd* (1908) 72 JP 132, DC.

13 *Arun District Council v Argyle Stores Ltd* (1986) Times, 16 June, 150 JP 552, DC (citing *Love v Strickland & Holt Ltd* (3 February 1981, unreported) a case to the same effect).

14 See note 13 *supra*.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

262 Procurement of samples

TEXT AND NOTE 11--Food Safety Act 1990 s 29 modified in its application to the taking of specified food samples which are subject to EC Commission Regulation 466/2001: Contaminants in Food (England) Regulations 2006, SI 2006/3062 (see PARA 319); Contaminants in Food (Wales) (No 2) Regulations 2006, SI 2006/1850 (see PARA 319).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/263. Production of authority.

263. Production of authority.

An officer procuring a sample for analysis¹ is not bound to produce his authority unless the seller asks for it, nor is it a condition precedent to a subsequent prosecution that the officer should prove that he is acting under the direction of the local authority². An inspector or other officer cannot insist on taking a sample outside the district for which he is appointed³.

1 As to the procurement of samples see PARA 262 ante.

2 A prosecution for the offence of refusing to sell will not lie if the sampling officer is unknown to the seller and shows no authority: *Payne v Hack* (1893) 58 JP 165; *Hale v Cole* (1891) 55 JP 376. It has been held in Ireland that when once an inspector has been appointed he may take proceedings at his own discretion, and without any special authorisation from the authority appointing him: *Connor v Butler* [1902] 2 IR 569. See also *Ross v Helm* [1913] 3 KB 462, DC; and PARA 457 post. An officer must produce his authority, if required, on seeking to enter under certain circumstances. As to powers of entry see PARA 261 ante.

3 *R v Smith* [1896] 1 QB 596, DC; *McNair v Cave* [1903] 1 KB 24.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/264. Division of the sample for analysis.

264. Division of the sample for analysis.

An authorised officer of an enforcement authority¹ who has procured a sample² and considers that it should be analysed must³ forthwith⁴ divide the sample into three parts, each part to be marked and sealed⁵. If the sample consists of sealed containers⁶ and opening them would, in the opinion of the authorised officer, impede a proper analysis⁷, the authorised officer must divide the sample into parts by putting the containers into three lots, and each lot must be treated as being a part⁸. The authorised officer must: (1) as soon as it is reasonably practicable to do so, give one part to the owner⁹ and give him notice that the sample will be analysed¹⁰; (2) submit one part for analysis¹¹; and (3) retain one part for future submission¹². If the authorised officer is of the opinion that division of the sample into parts is either not reasonably practicable or likely to impede a proper analysis, he must as soon as it is reasonably practicable to do so give to the owner notice that it will be analysed and must submit it for analysis¹³.

Where any act or omission constitutes both an offence under the Trade Descriptions Act 1968 and an offence under the food laws, evidence on behalf of the prosecution concerning any sample procured for analysis is not admissible in proceedings for the offence under the Trade Descriptions Act 1968 unless the relevant provisions of the food laws have been complied with¹⁴.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 I.e. under the Food Safety Act 1990 s 29: see PARA 262 ante.

3 I.e. subject to the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 6(4): see the text to note 15 infra.

4 It was formerly provided that the person purchasing any article with the intention of submitting it to analysis must, after completion of the purchase, 'forthwith' notify to the seller or his agent selling the article his intention to have it analysed: Sale of Food and Drugs Act 1875 s 14 (repealed). In cases decided under that provision it was held that 'forthwith' meant at the moment of time when the sale or taking was complete (*Parsons v Birmingham Dairy Co* (1882) 9 QBD 172), or within a few minutes thereafter (*Somerset v Miller* (1890) 54 JP 614). Under the Food Safety Act 1990 it is the division of a sample which must be done 'forthwith', and no limit of time is fixed for notification of the seller or other person. The test of immediacy in relation to the word 'forthwith' remains stringent in respect of the division of a sample: see *Re Southam, ex p Lamb* (1881) 19 ChD 169, CA. See also *Re Muscovitch, ex p Muscovitch* [1939] Ch 694 at 697, [1939] 1 All ER 135 at 139, CA, per Sir Wilfred Greene MR; and cf *Brown v Bonnyrigg and Lasswade Magistrates* 1936 SC 258; *Hillingdon London Borough Council v Cutler* [1968] 1 QB 124, [1967] 2 All ER 361, CA.

5 See the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 6(1), (3)(a), (b). These regulations do not apply to any sample taken under the provisions of the Poultry Meat (Water Content) Regulations 1984, SI 1984/1145 (as amended) (see PARA 438 post); the Materials and Articles in Contact with Food Regulations 1987, SI 1987/1523 (as amended) (see PARA 319 post); the Plastic Materials and Articles in Contact with Food Regulations 1998, SI 1998/1376 (see PARA 319 post); the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, SI 1997/1729 (see PARA 327 post); the Contaminants in Food Regulations 1997, SI 1997/1499 (as amended) (see PARA 319 post) (to the extent that a sample falls to be prepared and analysed in accordance with reg 4A (as added)); and the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540 (see PARAS 451-453 post): Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 2, Sch 1 (reg 2 amended by SI 1999/1603; Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, Sch 1 amended by SI 1991/2843; SI 1995/1086; SI 1995/1372; SI 1997/1729; SI 1998/1376; SI 1999/1540; SI 1999/1603).

6 'Container' includes any basket, pail, tray, package or receptacle of any kind, whether open or closed: Food Safety Act 1990 s 53(1).

7 'Analysis' includes microbiological assay and any technique for establishing the composition of food; and 'analyse' is to be construed accordingly: *ibid* s 53(1). For the meaning of 'food' see *PARA 201 ante*.

8 Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 6(2).

9 'Owner' means: (1) in the case of goods in transit, the consignor (or, if he does not have an address in Great Britain, the consignee); (2) in the case of goods from a vending machine (a) if the machine is marked with the name and address of its owner, and that address is in Great Britain, that person; (b) in any other case, the occupier of the premises on which the machine stands or to which it is affixed; (3) in any other case, the person appearing to the authorised officer to be the owner of the sample when he procured it: *ibid* reg 1(2). For the meaning of 'Great Britain' see *PARA 206 note 1 ante*. For the meaning of 'premises' see *PARA 204 note 16 ante*.

10 *Ibid* reg 6(3)(c).

11 *Ibid* reg 6(3)(d).

12 *Ibid* reg 6(3)(e). As to future submission see *PARA 265 post*.

13 *Ibid* reg 6(4).

14 See the Trade Descriptions Act 1968 s 22(2); and *SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue)* *PARA 502*.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see *CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue)* *PARA 42A et seq*.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see *LOCAL GOVERNMENT vol 69 (2009)* *PARA 733*. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)* *PARA 196A*.

264 Division of the sample for analysis

NOTE 5--SI 1987/1523 replaced, in relation to England, by the Materials and Articles in Contact with Food (England) Regulations 2007, SI 2007/2790 (amended by SI 2009/2938); and, in relation to Wales, by the Materials and Articles in Contact with Food (Wales) Regulations 2007, SI 2007/3252 (amended by SI 2008/1682, SI 2009/481, SI 2009/3105).

SI 1990/1540 replaced, in relation to England, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007, SI 2007/2785 (amended by SI 2009/1598), which include separate provision concerning sampling.

SI 1990/2463 Sch 1 further amended, in relation to England, by SI 2002/890, SI 2002/2364, SI 2002/3008, SI 2003/666, SI 2004/656, SI 2006/1464, SI 2007/210, SI 2007/2786, SI 2007/2790, SI 2008/56, SI 2008/916, SI 2009/1223 and, in relation to Wales, by SI 2003/302, SI 2003/3042, SI 2004/1509, SI 2006/1850, SI 2007/840, SI 2007/3252, SI 2008/56, SI 2008/1682, SI 2009/481, SI 2009/1386.

SI 1998/1376 replaced, in relation to England, by the Plastic Materials and Articles in Contact with Food (England) Regulations 2009, SI 2009/205, and, in relation to Wales, by the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2009, SI 2009/481.

SI 1990/2463 also does not apply to the Plastic Materials and Articles in Contact with Food (Lid Gaskets) (England) Regulations 2007, SI 2007/2786 (amended by SI 2008/1642), the Materials and Articles in Contact with Food (Wales) Regulations 2007, SI 2007/3252, and the Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Wales) Regulations 2008, SI 2008/56: SI 1990/2463 Sch 1 (as amended: see above).

TEXT AND NOTE 14--Trade Descriptions Act 1968 s 22 repealed: SI 2008/1277. Provision for made for the prohibition of unfair commercial practices by the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277; see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 725A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/265. Submission of the retained sample.

265. Submission of the retained sample.

The purpose of the retained sample¹ is to enable it to be analysed in the event of future dispute. An authorised officer of an enforcement authority² who has retained part of the sample must submit it to the Government Chemist (or such other food analyst as the Government Chemist may direct) for analysis if he and the owner³ so agree (which agreement may include who is to pay the analysis fees), or a court so orders⁴. If the retained sample is properly sealed then a prosecution will lie despite subsequent deterioration of the retained sample, preventing its analysis⁵.

1 The sample retained under the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2643, reg 6(3)(e); and PARA 264 ante.

2 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

3 For the meaning of 'owner' see PARA 264 note 9 ante.

4 See the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2643, reg 7; and PARA 464 post.

5 *Suckling v Parker* [1906] 1 KB 527; *Winterbottom v Allwood* [1915] 2 KB 608; *Chalmers v M'Meeking* 1921 JC 54.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/266. Procedure where a sample is to be examined.

266. Procedure where a sample is to be examined.

Where a sample is to be examined¹ rather than analysed², only a single sample is taken³. An authorised officer of an enforcement authority⁴ who has procured a sample⁵ and who considers that it should be examined must: (1) if necessary place the sample in a suitable container⁶ and seal the container⁷; (2) mark the sample or container⁸; (3) as soon as it is reasonably practicable to do so, give notice to the owner⁹ that the sample will be examined¹⁰; and (4) submit it for examination¹¹.

1 'Examination' means a microbiological examination and 'examine' is to be construed accordingly: Food Safety Act 1990 s 28(2).

2 As to the procedure where a sample is to be analysed see PARA 264 ante.

3 See notes 4-11 infra.

4 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 253 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

5 Ie under the Food Safety Act 1990 s 29: see PARA 262 ante.

6 For the meaning of 'container' see PARA 264 note 6 ante.

7 Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 8(a).

8 Ibid reg 8(b).

9 For the meaning of 'owner' see PARA 264 note 9 ante.

10 Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 8(c).

11 Ibid reg 8(d).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/267. Duty to analyse and examine samples.

267. Duty to analyse and examine samples.

An authorised officer of an enforcement authority¹ who has procured a sample² must: (1) if he considers that the sample should be analysed³, submit it to be analysed either by the public analyst⁴ for the area in which the sample was procured, or by the public analyst for the area which consists of or includes the area of the authority⁵; and (2) if he considers that the sample should be examined⁶, submit it to be examined by a food examiner⁷. A person, other than such an officer, who has purchased any food⁸, or any substance⁹ capable of being used in the preparation¹⁰ of food, may submit a sample of it: (a) to be analysed by the public analyst for the area in which the purchase was made; or (b) to be examined by a food examiner¹¹.

If, in any case where a sample is proposed to be submitted for analysis, the office of public analyst for the area in question is vacant, the sample may be submitted to the public analyst for some other area¹². If, in any case where a sample is proposed to be or is submitted for analysis or examination, the food analyst¹³ or examiner determines that he is for any reason unable to perform the analysis or examination, the sample may be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine¹⁴.

A food analyst or examiner must analyse or examine as soon as practicable any sample submitted or sent to him, but may, except where he is the public analyst for the area in question and the sample is submitted to him for analysis by an authorised officer of an enforcement authority, demand in advance the payment of such reasonable fee as he may require¹⁵.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 Ie under the Food Safety Act 1990 s 29: see PARA 262 ante. 'Sample', in relation to an authorised officer of an enforcement authority, includes any part of a sample retained by him in pursuance of regulations under s 31 (as amended) (see PARA 270 post): s 30(9).

3 For the meaning of 'analysis' see PARA 264 note 7 ante.

4 As to the appointment of public analysts see PARA 268 post. Where two or more public analysts are appointed for any area, any reference in the Food Safety Act 1990 s 30 (as amended) to the public analyst for that area is to be construed as a reference to either or any of them: s 30(9).

5 Ibid s 30(1)(a).

6 For the meaning of 'examination' see PARA 266 note 1 ante.

7 Food Safety Act 1990 s 30(1)(b). 'Food examiner' means any person who possesses the requisite qualifications to carry out examinations for the purposes of the Food Safety Act 1990: s 30(9). 'The requisite qualifications' means such qualifications as may be prescribed by regulations made by the Secretary of State, or such other qualifications as the Secretary of State may approve: s 30(9) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). As to the Secretary of State see PARA 224 ante. A person is qualified to be a food examiner if he satisfies the requirements of the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 4, Sch 2. As to disqualifications see PARA 268 note 3 post.

8 For the meaning of 'food' see PARA 201 ante.

9 For the meaning of 'substance' see PARA 201 note 4 ante.

10 For the meaning of 'preparation' see PARA 201 note 3 ante.

11 Food Safety Act 1990 s 30(2).

12 Ibid s 30(3).

13 'Food analyst' means a public analyst or any other person who possesses the requisite qualifications to carry out analyses for the purposes of the Food Safety Act 1990: s 30(9). As to the qualifications of food analysts see PARA 268 note 3 post.

14 Ibid s 30(4).

15 Ibid s 30(5).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/268. Appointment of public analyst.

268. Appointment of public analyst.

Every food authority¹ in England and Wales must appoint one or more persons to act as public analysts for the purposes of the Food Safety Act 1990 within its area². No person may be appointed as a public analyst unless he possesses such qualifications as may be prescribed by regulations³ made by the Secretary of State⁴, or such other qualifications as the Secretary of State may approve⁵. No person may act as a public analyst for any area who is engaged directly or indirectly in any food business⁶ which is carried on in that area⁷.

An authority must pay to a public analyst such remuneration as may be agreed, which may be expressed to be payable either in addition to any fees received by him⁸, or on condition that any fees so received by him are paid over by him to the authority⁹.

An authority which appoints only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office¹⁰.

A food authority may also provide facilities for examinations¹¹ for the purposes of the Food Safety Act 1990¹².

1 For the general meaning of 'food authority' see PARA 251 ante. For the purposes of the Food Safety Act 1990 s 27(1) (as amended), 'food authority' does not include the council of a non-metropolitan district in England (except where the county functions have been transferred to that council pursuant to a structural change), the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple: s 27(5) (amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 16(2); Local Government Changes for England Regulations 1994, SI 1994/867, reg 24).

2 See the Food Safety Act 1990 s 27(1).

3 A person is qualified to be a food analyst or, subject to the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 5(1), a public analyst if he possesses a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry: reg 3. No director, owner or employee of a food business, or partner in a food business may act as a public analyst for the area in which such business is situated (reg 5(1)); or may analyse or examine any sample which he knows was taken from that business (reg 5(2)).

4 As to the Secretary of State see PARA 224 ante.

5 Food Safety Act 1990 s 27(2) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8).

6 The reference to being engaged directly or indirectly in a food business includes a reference to having made such arrangements with a food business as may be prescribed by regulations made by the Secretary of State: Food Safety Act 1990 s 27(5) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). For the meaning of 'food' see PARA 201 ante; and for the meaning of 'food business' see PARA 241 note 11 ante.

7 Food Safety Act 1990 s 27(2) (as amended: see note 5 supra).

8 *Ie* under *ibid* Pt III (ss 27-39) (as amended).

9 *Ibid* s 27(3).

10 *Ibid* s 27(4). Any reference in ss 28-60, Schs 2-5 (as amended) to a public analyst is to be construed as including a reference to a deputy public analyst appointed under s 27(4): s 27(4)(b). The provisions set out in the text with respect to the qualifications, appointment, removal and remuneration of a public analyst apply also in relation to a deputy public analyst: s 27(4)(a).

11 For the meaning of 'examination' see PARA 223 note 1 ante.

12 See the Food Safety Act 1990 s 28(1).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

268 Appointment of public analyst

NOTE 1--1990 Act s 27(5) further amended: Local Government and Public Involvement in Health Act 2007 Sch 1 para 17, Sch 18 Pt 1.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/269. Issue and form of certificate of analysis or examination.

269. Issue and form of certificate of analysis or examination.

The food analyst¹ or examiner² who has analysed³ or examined⁴ a sample⁵ must give to the person by whom it was submitted a certificate in the prescribed form⁶ specifying the result of the analysis or examination⁷. Any such certificate given by a food analyst or examiner must be signed by him, but the analysis or examination may be made by any person acting under his direction⁸. The owner⁹ is entitled on request to be supplied with a copy of the certificate of analysis or examination by the enforcement authority¹⁰.

In any proceedings under the Food Safety Act 1990, the production by one of the parties: (1) of a document purporting to be such a certificate given by a food analyst or examiner; or (2) of a document supplied to him by the other party as being a copy of such a certificate, is sufficient evidence of the facts stated in it unless, in a case falling within head (1) above, the other party requires that the food analyst or examiner is to be called as a witness¹¹.

The analyst should be careful to keep to the prescribed form, and to state the result of his examination. If there is adulteration in any degree he should not indulge in vague generalities nor content himself with merely expressing his opinion. In such a case he should set out his findings with such clearness that, upon the data he gives, the justices may be able to form their own opinion as to whether the article was or was not adulterated¹².

The insertion in the certificate of the weight of the sample is not obligatory unless the weight is a material factor in the analysis, and its omission will not necessarily invalidate the certificate¹³. When the space for the weight of the sample is left blank, it is not necessary that the certificate should contain a statement that the article could not conveniently be weighed¹⁴.

The analyst may make observations in cases of addition, abstraction or deficiency of any kind, but he is not limited to this and may offer such observations as he wishes¹⁵. If there is no legal standard for the article analysed he must show in the certificate what standard he has adopted¹⁶, and where the certificate is to be put in as evidence he should state enough to enable not only the court, but also the defendant, to see exactly what is the offence charged¹⁷.

If a sample is submitted to the Government Chemist, he is not required to give a certificate in the prescribed form¹⁸.

1 For the meaning of 'food analyst' see PARA 267 note 13 ante.

2 For the meaning of 'food examiner' see PARA 267 note 7 ante.

3 For the meaning of 'analyse' see PARA 264 note 7 ante.

4 For the meaning of 'examine' see PARA 223 note 1 ante.

5 For the meaning of 'sample' see PARA 267 note 2 ante.

6 For the prescribed form see the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 9(2), Sch 3.

7 Food Safety Act 1990 s 30(6).

8 Ibid s 30(7).

9 For the meaning of 'owner' see PARA 264 note 9 ante.

10 See the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 9(1). For the meaning of 'enforcement authority' see PARA 222 ante.

11 Food Safety Act 1990 s 30(8). This relates only to a sample taken under s 29: see PARA 262 ante. A private purchaser who desires to have an analysis made of his purchase by an analyst who is not a public analyst may do so, but, if he does and proceedings follow, the analyst's evidence must be given orally, for his certificate will not be admissible in evidence, apart from the provisions of the Civil Evidence Act 1968, in so far as they may be applicable. As regards those provisions see generally CIVIL PROCEDURE. Where an article is purchased for consumption and subsequently the purchaser decides to have it analysed, the fact that at the time of the purchase he did not comply with the requirements as to division, sealing and marking of the sample (see PARA 264 ante), is not a bar to a prosecution: see *Buckler v Wilson* [1896] 1 QB 83, DC; *Enniskillen Union Guardians v Hilliard* (1884) 15 Cox CC 643. It is not necessary that the purchaser should personally deliver the part to be submitted for analysis to the public analyst; he may hand it to another person for delivery: *Horder v Scott* (1880) 5 QBD 552, DC.

12 *Newby v Sims* [1894] 1 QB 478, where a certificate stating 'I find the sample contains an excess of water over and above what is allowed by Act of Parliament; I estimate the excess of water at 13% of the entire sample; I am of opinion that the said sample is not a sample of genuine rum' was held to be bad for vagueness. It ought to have stated the total amount of water found in the sample. In *Lee v Bent, Barlow v Noblett* [1901] 2 KB 290 at 292, DC, the certificates stated respectively 'We are of opinion that the said sample contains arsenic' and 'We are of opinion that the said sample contains a serious quantity of arsenic'. Both were held to be insufficient. In *Fortune v Hanson* [1896] 1 QB 202, DC, a certificate stating 'I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5% of added water to the prejudice of the purchaser' was held to be bad. 'The certificate must state such facts as would enable the justices themselves to come to a conclusion whether the article of food in question had or had not been adulterated': *Fortune v Hanson* supra at 205 per Hawkins J.

In *Bridge v Howard* [1897] 1 QB 80 the certificate stated 'I am of opinion that the sample contains the parts as under: milk, 94%; added water, 6%. This opinion is based on the fact that the sample contained 7.97% solids not fat, whereas genuine milk contains not less than 8.5% solids not fat'. This certificate was held to be good, because the analyst not only stated the percentage of added water, but also gave the scientific basis on which his conclusion rested. See also *Lee v Bent, Barlow v Noblett* supra at 295 per Lord Alverstone CJ; *Findley v Haas* (1903) 67 JP 198 (where a certificate that brandy had been 'reduced from 25% under proof to 27.6% under proof' was held to be good); *Hull v Horsnell* (1904) 68 JP 591 at 592 per Lord Alverstone CJ; *Bayley v Cook* (1905) 69 JP 139; *Gordon v Love* 1911 SC (J) 75; and also *Jenkins v Naden* (1919) 88 LJKB 1137 (where a certificate stating the percentage of fat in a sample of milk, but not setting out other constituents, was held to be good). Where the case is not one of adulteration the analyst need not set out the constituent parts of the sample. It is sufficient to set out the 'result' of the analysis: *Bakewell v Davis* [1894] 1 QB 296. Where the case is one of passing off an imitation article for the genuine it is sufficient for the public analyst to so certify without giving full analytical compositional details: *Tolson v Larcombes (Bellingham) Ltd* (1961) 60 LGR 75, 106 Sol Jo 15, DC.

13 *Sneath v Taylor* [1901] 2 KB 376, DC.

14 *Hunter v Wintrup* 1904 4 Adam 471.

15 See the form of certificate in the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 9(2), Sch 3. In the certificate the analyst may give his opinion and observations. His opinions must be within his range as an expert witness and care must be taken by him to avoid statements purporting to decide the issue before the court. Where there is a statement of what the public analyst considers the minimum standard to which in his opinion the article should conform, reasons for his opinion should be given: see *Marston v Loney* [1955] Crim LR 778, DC; *Thrussell v Whiteman* [1956] Crim LR 195, DC. See also *Concentrated Foods Ltd v Champ* [1944] KB 342, [1944] 1 All ER 272, DC. Mere surplusage, however, does not invalidate a certificate: *Gordon v Love* 1911 SC (J) 75.

16 *Gammack v Jackson Wyness Ltd* [1948] 2 All ER 1056, DC.

17 *Gammack v Jackson Wyness Ltd* [1948] 2 All ER 1056 at 1057, DC, per Lord Goddard CJ.

18 See *Foot v Findlay* [1909] 1 KB 1, DC. See also PARA 265 ante.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(3) POWERS OF INSPECTION, SAMPLING AND ANALYSIS/270. Regulation of sampling and analysis.

270. Regulation of sampling and analysis.

The Secretary of State¹ may by regulations make provision for supplementing or modifying the provisions relating to the procurement and analysis of samples². Without prejudice to the generality of the above, such regulations may make provision with respect to³:

- 63 (1) the matters to be taken into account in determining whether, and at what times, samples should be procured⁴;
- 64 (2) the manner of procuring samples, including the steps to be taken in order to ensure that any samples procured are fair samples⁵;
- 65 (3) the method of dealing with samples, including (where appropriate) their division into parts⁶;
- 66 (4) the persons to whom parts of samples are to be given and the persons by whom such parts are to be retained⁷;
- 67 (5) the notices which are to be given to, and the information which is to be furnished by, the persons in charge of any food⁸, substance⁹, contact material¹⁰ or food source¹¹ of or from which samples are procured¹²;
- 68 (6) the methods which are to be used in analysing¹³ or examining¹⁴ samples, or parts of samples, or in classifying the results of analyses or examinations¹⁵;
- 69 (7) the circumstances in which a food analyst¹⁶ or examiner¹⁷ is to be precluded, by reason of a conflict of interest, from analysing or examining a particular sample or part of a sample¹⁸; and
- 70 (8) the circumstances in which samples, or parts of samples, are to be or may be submitted for analysis or examination: (a) to the Government Chemist, or to such other food analyst or examiner as he may direct; or (b) to a person determined by or under the regulations¹⁹.

1 As to the Secretary of State see PARA 224 ante.

2 Food Safety Act 1990 s 31(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). The provisions referred to in the text are those of the Food Safety Act 1990 ss 29, 30 (as amended): see PARAS 262-267 ante.

3 Ibid s 31(2).

4 Ibid s 31(2)(a).

5 Ibid s 31(2)(b).

6 Ibid s 31(2)(c).

7 Ibid s 31(2)(d).

8 For the meaning of 'food' see PARA 201 ante.

9 For the meaning of 'substance' see PARA 201 note 4 ante.

10 For the meaning of 'contact material' see PARA 241 note 11 ante.

11 For the meaning of 'food source' see PARA 201 ante.

12 Food Safety Act 1990 s 31(2)(e).

13 For the meaning of 'analyse' see PARA 264 note 7 ante.

- 14 For the meaning of 'examine' see PARA 223 note 1 ante.
- 15 Food Safety Act 1990 s 31(2)(f).
- 16 For the meaning of 'food analyst' see PARA 267 note 13 ante; definition applied by ibid s 31(3).
- 17 For the meaning of 'food examiner' see PARA 267 note 7 ante; definition applied by ibid s 31(3).
- 18 Ibid s 31(2)(g).
- 19 Ibid s 31(2)(h).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(4) OBSTRUCTION AND PROTECTION OF OFFICERS/271. Obstruction of officers.

(4) OBSTRUCTION AND PROTECTION OF OFFICERS

271. Obstruction of officers.

Any person who: (1) intentionally¹ obstructs² any person acting in the execution of the Food Safety Act 1990³; or (2) without reasonable cause fails to give to any person acting in the execution of the Act any assistance or information which that person may reasonably require of him for the performance of his functions⁴ under the Act⁵, is guilty of an offence⁶. Any person who, in purported compliance with any such requirement as is mentioned in head (2) above, furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular, is guilty of an offence⁷.

However, nothing in head (2) above is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him⁸.

A person who: (a) intentionally obstructs a person exercising powers for the purpose of carrying out observations for the Food Standards Agency⁹; (b) fails without reasonable excuse to comply with any requirement to provide facilities, records or information or other assistance made in connection with such observations¹⁰; or (c) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular, is guilty of an offence¹¹.

A person who: (i) intentionally obstructs an authorised person exercising powers given to the Agency to monitor enforcement action¹²; (ii) fails without reasonable excuse to comply with any requirement imposed to provide the Agency with information relating to enforcement action¹³, or any requirement to provide facilities, records or information and assistance to any authorised person exercising powers given to the Agency to monitor enforcement action¹⁴; or (iii) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular, is guilty of an offence¹⁵.

1 In previous legislation relating to food, the word 'wilfully' was used rather than 'intentionally'. It is submitted that in this context there is no difference and the word means a deliberate and intentional obstruction as opposed to one which is accidental or inadvertent: see *R v Senior* [1899] 1 QB 283, CA; *R v Walker* (1934) 24 Cr App Rep 117; *Eaton v Cobb* [1950] 1 All ER 1016, DC.

2 Obstruction need not involve any physical action: *Borrow v Howland* (1896) 74 LT 787, DC; *Betts v Stevens* [1910] 1 KB 1, DC; *Hinchliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC. Anything which makes it more difficult for a person to carry out his duty amounts to obstruction: *Hinchliffe v Sheldon* supra at 408 per Lord Goddard CJ. See also *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC. It appears that the intention must be to obstruct the officer, and intervention with the intention of assisting the person obstructed is not an offence: see *Willmott v Atack* [1977] QB 498, [1976] 3 All ER 794, DC. Standing by and doing nothing is not an obstruction unless there is a legal duty to act: *Swallow v LCC* [1916] 1 KB 224, DC.

3 The person must be acting under statutory authority, it is not sufficient that he purports to act in that way: see *Davis v Lisle* [1936] 2 KB 434, [1936] 2 All ER 213, DC.

4 For the meaning of 'functions' see PARA 225 note 1 ante.

5 Instructions to an employee from a superior member of staff not to answer questions will not constitute reasonable cause: see *R v Greater Manchester Justices, ex p Aldi GmbH & Co KG* (1994) 159 JP 717, DC, where

a checkout operator was charged with failing to give information to a trading standards officer without reasonable cause contrary to the Consumer Protection Act 1987.

6 Food Safety Act 1990 s 33(1). A person guilty of such an offence is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both: s 35(2), (3). As to the statutory maximum see PARA 261 note 23 ante. As to penalties see PARA 468 post.

7 Food Safety Act 1990 s 33(2). It has been held under similar provisions in the Trade Descriptions Act 1968 s 29 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 511) that it is an offence to give false information during an interview under caution, even though a person being interviewed under caution was under no obligation to answer any questions and thus would not have been guilty of an offence under the equivalent of the Food Safety Act 1990 s 33(1)(b) (see head (2) in the text) if he had declined to say anything at all: see *R v Page* (1995) 94 LGR 467, 161 JP 340, CA.

8 Food Safety Act 1990 s 33(3). An employee of the owner of premises cannot rely on the privilege against self-incrimination to avoid answering questions put to him by an authorised officer in circumstances where the answers might incriminate his employer rather than the employee: *Walkers Snack Foods Ltd v Coventry City Council* [1998] 3 All ER 163, 96 LGR 517, DC.

9 le under the Food Standards Act 1999 s 11(4)(a)-(d): see PARA 242 ante. As to the establishment of the Food Standards Agency see PARA 225 ante.

10 le under *ibid* s 11(4)(e): see PARA 242 ante.

11 *Ibid* s 11(8). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 11(8). As to the standard scale see PARA 242 note 18 ante.

12 le under *ibid* s 14(4)(a)-(c): see PARA 245 post.

13 le under *ibid* s 13(1): see PARA 244 ante.

14 le under *ibid* s 14(4)(d): see PARA 245 post.

15 See *ibid* s 16(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 16(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(4) OBSTRUCTION AND PROTECTION OF OFFICERS/272. Protection of officers.

272. Protection of officers.

An officer¹ of a food authority² is not personally liable in respect of any act done by him in the execution or purported execution of the Food Safety Act 1990, and within the scope of his employment, if he did that act in the honest belief that his duty under the Act required or entitled him to do it³.

Where an action has been brought against an officer of a food authority in respect of an act done by him in the execution or purported execution of the Act, but outside the scope of his employment, the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment⁴.

1 For the meaning of 'officer' see PARA 244 note 6 ante. A public analyst appointed by a food authority is to be treated for the purposes of the Food Safety Act 1990 s 44 as being an officer of the authority, whether or not his appointment is a whole-time appointment: s 44(4). As to vicarious liability see generally TORT vol 97 (2010) PARA 401 et seq.

2 For the meaning of 'food authority' see PARA 251 ante.

3 Food Safety Act 1990 s 44(1). This may not be construed as relieving any food authority from any liability in respect of the acts of its officers: s 44(2).

4 Ibid s 44(3).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(5) REGISTRATION AND LICENSING OF FOOD PREMISES/273. Food premises.

(5) REGISTRATION AND LICENSING OF FOOD PREMISES

273. Food premises.

The Secretary of State¹ may by regulations make provision: (1) for the registration by enforcement authorities² of premises³ used or proposed to be used for the purposes of a food business⁴, and for prohibiting the use for those purposes of any premises which are not registered in accordance with the regulations⁵; or (2) for the issue by such authorities of licences in respect of the use of premises for the purposes of a food business, and for prohibiting the use for those purposes of any premises except in accordance with a licence issued under the regulations⁶. The Secretary of State may exercise the power conferred by head (2) above only where it appears to him to be necessary or expedient to do so: (a) for the purpose of securing that food⁷ complies with food safety requirements or in the interests of the public health; or (b) for the purpose of protecting or promoting the interests of consumers⁸.

The Food Premises (Registration) Regulations 1991⁹ provide that no person may use any premises as a food business on five or more days in any period of five consecutive weeks if those premises are unregistered¹⁰. Applications for registration must be made in writing at least 28 days before the first day of such use¹¹, and the registration authority is obliged to keep written records of the name and address of the business and the nature of the business carried on the premises¹². Any changes to the proprietor or the nature of the business must be registered with the food authority¹³. Contravention of the regulations is punishable by the imposition of a fine¹⁴.

Regulations governing the irradiation of food have been made in part under this power to make regulations for the licensing of food premises¹⁵.

Regulations made under statutory provisions relating to food safety and consumer protection¹⁶ and the enforcement of European Community provisions¹⁷ also make requirements for approval or licensing of premises.

Appeal against the refusal, cancellation, suspension or revoking of such licences is by way of complaint to the magistrates' court within one month of notice of the decision being served¹⁸.

1 As to the Secretary of State see PARA 224 ante.

2 For the meaning of 'enforcement authority' see PARA 222 ante.

3 For the meaning of 'premises' see PARA 204 note 16 ante.

4 For the meaning of 'food business' see PARA 241 note 11 ante.

5 Food Safety Act 1990 s 19(1)(a) (s 19 amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 14)

6 Food Safety Act 1990 s 19(1)(b). See the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (see PARA 320-324 post); and the Food Premises (Registration) Regulations 1991, SI 1991/2825 (as amended) (see the text and notes 9-14 infra).

7 For the meaning of 'food' see PARA 201 ante.

8 Food Safety Act 1990 s 19(2) (as amended: see note 5 supra).

9 See the Food Premises (Registration) Regulations 1991, SI 1991/2825 (as amended). As to the enforcement of the regulations see reg 9.

10 See *ibid* regs 1, 2, Schs 1-3. There are exceptions for: (1) moveable premises other than those used within the area of a market; (2) certain commercial operations such as harvesting crops and collecting honey where there is little or no risk to human health; (3) certain commercial operations where the premises are subject to registration or control under other legislation such as slaughterhouses; (4) premises used by charities or voluntary organisations; (5) premises where no food is ordinarily kept; (6) premises where food is stored for use in emergencies or disasters; and (7) for certain Crown premises where exemption has been given by the Secretary of State: see reg 3 (amended by SI 1992/2037; SI 1993/2022; SI 1994/1029; SI 1994/3082; SI 1995/539; SI 1995/540; SI 1995/1086; SI 1995/2148; SI 1995/3205; SI 1997/723; and SI 1998/994). As to approval of meat products premises see the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended); and PARA 328 post. As to the approval of minced meat and meat preparation premises see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended); and PARAS 335-338 post.

11 See the Food Premises (Registration) Regulations 1991, SI 1991/2825, reg 4. For the form of application for registration of food premises see Sch 4. For the Welsh version of the application form see the Food Premises (Registration) (Welsh Form of Application) Regulations 1993, SI 1993/1270.

12 See the Food Premises (Registration) Regulations 1991, SI 1991/2825, regs 5, 6.

13 See *ibid* reg 7 (amended by SI 1993/2022; and SI 1997/723).

14 See the Food Premises (Registration) Regulations 1991, SI 1991/2825, reg 8.

15 See the Food (Control of Irradiation) Regulations 1990, SI 1990/2490; and PARAS 320-324 post.

16 See under the Food Safety Act 1990 s 16 (as amended): see PARA 289 post.

17 See under *ibid* s 17 (as amended): see PARA 215 ante.

18 See *ibid* s 37; and see PARA 287 post.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

273 Food premises

NOTES 6, 15--SI 1990/2490 replaced: see PARAS 320-324.

TEXT AND NOTES 9-14--SI 1991/2825 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

NOTE 10--SI 1994/3082, SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(5) REGISTRATION AND LICENSING OF FOOD PREMISES/274. Continuance of registration or licence on death.

274. Continuance of registration or licence on death.

On the death of any person who is registered in respect of any premises¹ in accordance with regulations made under Part II of the Food Safety Act 1990², or who holds a licence issued in accordance with such regulations³, the registration or licence subsists for the benefit of the deceased's personal representative, or his widow or any other member of his family, until the end of the period of three months beginning with his death, or such longer period as the enforcement authority⁴ may allow⁵.

- 1 For the meaning of 'premises' see PARA 204 note 16 ante.
- 2 Ie under the Food Safety Act 1990 Pt II (ss 7-26) (as amended).
- 3 Ibid s 43(1).
- 4 For the meaning of 'enforcement authority' see PARA 222 ante.
- 5 Food Safety Act 1990 s 43(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

274 Continuance of registration or licence on death

TEXT AND NOTE 5--Food Safety Act 1990 s 43(2) amended: Civil Partnership Act 2004 Sch 27 para 136.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(6) DOCUMENTS/275. Form and authentication of documents.

(6) DOCUMENTS

275. Form and authentication of documents.

The following must be in writing, namely: (1) all documents authorised or required by or under the Food Safety Act 1990 to be given, made or issued by a food authority¹; and (2) all notices and applications authorised or required by or under the Act to be given or made to, or to any officer of, such an authority². The Secretary of State³ may by regulations prescribe the form of any document to be used for any of the purposes of the Act and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable⁴. Any document which a food authority is authorised or required by or under the Act to give, make or issue may be signed⁵ on behalf of the authority: (a) by the proper officer⁶ of the authority as respects documents relating to matters within his province⁷; or (b) by any officer of the authority authorised by it in writing to sign documents of the particular kind or, as the case may be, the particular document⁸. Any document purporting to bear the signature of an officer who is expressed to hold an office by virtue of which he is empowered⁹ to sign such a document, or to be duly authorised by the food authority to sign such a document or the particular document, is deemed, for the purposes of the Act and of any regulations and orders made under it, until the contrary is proved, to have been duly given, made or issued by authority of the food authority¹⁰.

1 For the meaning of 'food authority' see PARA 251 ante.

2 Food Safety Act 1990 s 49(1).

3 As to the Secretary of State see PARA 224 ante.

4 Food Safety Act 1990 s 49(2) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). The following regulations have been made in exercise of this power: the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463 (as amended) (see PARAS 264-269 ante); the Detention of Food (Prescribed Forms) Regulations 1990, SI 1990/2614; and the Food Safety (Improvement and Prohibition-Prescribed Forms) Regulations 1991, SI 1991/100. Numerous other regulations have been made in exercise of the power under the Food Safety Act 1990 s 49(2) (as amended) and are set out elsewhere in this title.

5 'Signature' includes a facsimile of a signature by whatever process reproduced: *ibid* s 49(5).

6 'Proper officer', in relation to any purpose and to any food authority or any area, means the officer appointed for that purpose by that authority or, as the case may be, for that area: *ibid* s 49(5).

7 *Ibid* s 49(3)(a).

8 *Ibid* s 49(3)(b).

9 *Ie* under *ibid* s 49 (as amended).

10 *Ibid* s 49(4).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the

Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(6) DOCUMENTS/276. Service of documents.

276. Service of documents.

Any document which is required or authorised by or under the Food Safety Act 1990 to be given to or served on any person may, in any case for which no other provision is made by the Act, be given or served in the following ways¹:

- 71 (1) by delivering it to that person²;
- 72 (2) in the case of an authorised officer of an enforcement authority³, by leaving it, or sending it in a prepaid letter addressed to him, at his office⁴;
- 73 (3) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office⁵; or
- 74 (4) in the case of any other person, by leaving it, or sending it in a prepaid letter addressed to him, at his usual or last known residence⁶.

Where a document is to be given to or served on the owner or the occupier⁷ of any premises⁸ and it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of 'owner' or 'occupier' of the premises (naming them) and by delivering it to some person on the premises, or if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises⁹.

1 Food Safety Act 1990 s 50(1).

2 Ibid s 50(1)(a).

3 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante. For the meaning of 'enforcement authority' see PARA 222 ante.

4 Food Safety Act 1990 s 50(1)(b) (amended by the Deregulation and Contracting Out Act 1994 s 76, Sch 16 para 18).

5 Food Safety Act 1990 s 50(1)(c).

6 Ibid s 50(1)(d).

7 For the meaning of 'occupier' see PARA 261 note 12 ante.

8 For the meaning of 'premises' see PARA 204 note 16 ante.

9 Food Safety Act 1990 s 50(2).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(7) FINANCE/277. Expenses of county councils and authorised officers.

(7) FINANCE

277. Expenses of county councils and authorised officers.

Any expenses which are incurred under the Food Safety Act 1990 by an authorised officer of a food authority¹ in procuring samples, and causing samples to be analysed² or examined³, must be defrayed by that authority⁴.

Any expenses incurred by a county council⁵ in the enforcement and execution of any provision of the Food Safety Act 1990, or of any regulations or orders made under it, must, if the Secretary of State⁶ so directs, be defrayed as expenses for special county purposes charged on such part of the county as may be specified in the direction⁷.

The Secretary of State may make regulations requiring or authorising charges to be imposed by enforcement authorities⁸ in respect of things done or to be done by them which they are required or authorised to do by or under the Food Safety Act 1990⁹. Regulations may include such provision as the Secretary of State sees fit as regards charges for which the regulations provide and the recovery of such charges¹⁰. Regulations may provide that the amount of a charge (if imposed) is to be at the enforcement authority's discretion or to be at its discretion subject to a maximum or a minimum¹¹. Regulations providing that a charge may not exceed a maximum amount, or be less than a minimum amount, may provide for one amount, or a scale of amounts to cover different prescribed cases, and prescribe, as regards any amount, a sum or a method of calculating the amount¹².

1 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante; and for the meaning of 'food authority' see PARA 251 ante.

2 For the meaning of 'examine' see PARA 223 note 1 ante.

3 For the meaning of 'analyse' see PARA 264 note 7 ante.

4 Food Safety Act 1990 s 46(1).

5 As to county councils see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

6 As to the Secretary of State see PARA 224 ante.

7 Food Safety Act 1990 s 46(2).

8 For the meaning of 'enforcement authority' see PARA 222 ante.

9 Food Safety Act 1990 s 45(1) (s 45(1), (2) amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8, 20). In exercise of this power the following regulations have been made: the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended) (see PARAS 320-324 post); the Food Premises (Registration) Regulations 1991, SI 1991/2825 (as amended) (see PARA 273 ante); the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended) (see PARA 328-330 post); the Dairy Products (Hygiene) (Charges) Regulations 1995, SI 1995/1122; the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, SI 1997/1729 (see PARA 327 post); the Charges for Inspections and Controls Regulations 1997, SI 1997/2893 (as amended) (see PARA 327 post); the Meat (Hygiene and Inspection) (Charges) Regulations 1998, SI 1998/2095 (as amended) (see PARA 332 post); and the Specified Risk Material (Inspection Charges) Regulations 1999, SI 1999/539 (as amended) (see PARA 518 post).

10 Food Safety Act 1990 s 45(2) (as amended: see note 9 supra), which provides that nothing in s 45(3)-(4) is to prejudice this provision.

11 Ibid s 45(3).

12 Ibid s 45(4).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

277 Expenses of county councils and authorised officers

NOTE 9--SI 1991/2925, SI 1994/3082, SI 1995/1122 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). SI 1997/2893 replaced: Charges for Residues Surveillance Regulations 2006, SI 2006/2285 (amended by SI 2008/2999, SI 2009/2779). SI 1990/2490 replaced: see PARAS 320-324.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(7) FINANCE/278. Expenses of Ministers and the Food Standards Agency.

278. Expenses of Ministers and the Food Standards Agency.

There must be paid out of money provided by Parliament any expenditure incurred by a Minister of the Crown by virtue of the Food Safety Act 1990, and any increase attributable to the Act in the sums payable out of money so provided under any other Act¹. Any expenditure incurred by the Food Standards Agency² must be paid out of money provided by Parliament unless it is met from money³: (1) paid by the National Assembly for Wales⁴; (2) paid out of the Scottish Consolidated Fund⁵; or (3) appropriated by Act of the Northern Ireland Assembly⁶, for the purpose of meeting any of the expenditure of the Agency⁷, (or from money which the Agency is authorised by virtue of any relevant provision⁸ to apply for the purpose)⁹.

Any sums received by the Agency, other than: (a) money provided by Parliament or paid or appropriated under heads (1) to (3) above; (b) receipts which are, by virtue of provision made by or under any enactment¹⁰, payable to the National Assembly for Wales, into the Scottish Consolidated Fund, or into the Consolidated Fund of Northern Ireland, or which would be so payable but for any relevant provision relating to those receipts; and (c) other receipts specified, or of a description specified, in a determination¹¹, must be paid into the Consolidated Fund¹².

The Treasury¹³, the National Assembly for Wales, the Scottish Ministers¹⁴ and the Department of Finance and Personnel for Northern Ireland acting jointly may determine that any sums received by the Agency which are specified, or of a description specified, in the determination must (instead of being payable into the Consolidated Fund¹⁵) be payable to the National Assembly for Wales, into the Scottish Consolidated Fund or into the Consolidated Fund of Northern Ireland, subject to any relevant provision relating to such sums¹⁶. Such a determination may be revoked or amended by a further determination¹⁷.

1 Food Standards Act 1999 s 39(1).

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 Food Standards Act 1999 s 39(2).

4 Ibid s 39(3)(a). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Food Standards Act 1999 s 39(3)(b).

6 Ibid s 39(3)(c). As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

7 Food Standards Act 1999 s 39(3).

8 'Relevant provision' means: (1) provision made by or under any Act as to the disposal of or accounting for sums payable to the National Assembly for Wales; (2) provision made by or under the Scotland Act 1998 or any Act of the Scottish Parliament as to the disposal of or accounting for sums payable into the Scottish Consolidated Fund; and (3) provision made by or under any Act or any Northern Ireland legislation as to the disposal of or accounting for sums payable into the Consolidated Fund of Northern Ireland: Food Standards Act 1999 s 39(8).

9 Ibid s 39(2).

10 'Enactment' means an enactment contained in an Act, an Act of the Scottish Parliament or in Northern Ireland legislation: ibid s 39(8). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 le under the Food Standards Act 1999 s 39(5): see the text and note 16 infra.

12 Ibid s 39(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

13 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 As to the Scottish Ministers see PARA 226 note 3 ante.

15 le by virtue of the Food Standards Act 1999 s 39(4): see the text to note 12 supra.

16 Ibid s 39(5).

17 Ibid s 39(6).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(7) FINANCE/279. Appropriation accounts.

279. Appropriation accounts.

Where any appropriation accounts of the Food Standards Agency¹ or report of the Comptroller and Auditor General² on such accounts are laid before the House of Commons under the Exchequer and Audit Departments Act 1866, the Comptroller and Auditor General must send copies to the relevant authorities³ for Wales, Scotland and Northern Ireland⁴. The Scottish Ministers must present documents so received to the Scottish Parliament and the Department of Finance and Personnel for Northern Ireland must present such documents to the Northern Ireland Assembly⁵.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

3 'Relevant authorities' means the Treasury, the National Assembly for Wales, the Scottish Ministers and the Department of Finance and Personnel for Northern Ireland: Food Standards Act 1999 s 39(7), Sch 4 para 1. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Scottish Ministers see PARA 226 note 3 ante.

4 Food Standards Act 1999 Sch 4 para 2(1).

5 Ibid Sch 4 para 2(2). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

279 [Resource] accounts

TEXT AND NOTE 4--For 'appropriation' read 'resource' and for 'Exchequer and Audit Departments Act 1866' read 'Government Resources and Accounts Act 2000': Food Standards Act 1999 Sch 4 para 2(1) (amended by the Government Resources and Accounts Act 2000 s 29, Sch 1 para 26(2)).

TEXT AND NOTE 5--1999 Act Sch 4 para 2(2) amended: SI 2007/1388.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(7) FINANCE/280. Accounts of the Food Standards Agency relating to sums paid or appropriated.

280. Accounts of the Food Standards Agency relating to sums paid or appropriated.

The Food Standards Agency¹ must prepare separate accounts for each year of its expenditure in relation to each of the following descriptions of sums: (1) the sums paid by the National Assembly for Wales²; (2) the sums paid out of the Scottish Consolidated Fund³; or (3) sums appropriated by Act of the Northern Ireland Assembly⁴. Any sum received by the Agency which it applies by virtue of any relevant provision⁵ must be regarded as falling within head (1), head (2) or head (3) above, as the case may require⁶.

Accounts so required relating to sums of any description mentioned in head (1), head (2) or head (3) above, must be prepared in such form, and sent to the Comptroller and Auditor General⁷, and to the relevant authority for the accounts⁸, before such time, as the relevant authority for the accounts may direct after consulting the Agency and the other relevant authorities⁹. The Comptroller and Auditor General must examine any accounts so sent to him on behalf of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly (according to the description of sums to which the accounts relate)¹⁰. In carrying out his examination of any such accounts the Comptroller and Auditor General must, among other things, satisfy himself that the money expended by the Agency has been applied to the purpose or purposes for which the sums in question were intended to provide¹¹. When the Comptroller and Auditor General has certified and reported on any accounts, he must send the accounts and report to the relevant authority for the accounts, and send copies to the other relevant authorities¹². The Treasury must present such documents received to the House of Commons, the Scottish Ministers must present such documents to the Scottish Parliament and the Department of Finance and Personnel for Northern Ireland must present such documents to the Northern Ireland Assembly¹³.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Ie under the Food Standards Act 1999 s 39(3)(a): see PARA 278 ante. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ie under the Food Standards Act 1999 s 39(3)(b): see PARA 278 ante.

4 Ibid s 39(7), Sch 4 para 3(1). The text refers to sums appropriated under s 39(3)(c): see PARA 278 ante. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

5 For the meaning of 'relevant provision' see PARA 278 note 8 ante.

6 Food Standards Act 1999 Sch 4 para 3(2).

7 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

8 'The relevant authority for the accounts' is, in the case of accounts relating to sums within head (1) in the text, the National Assembly for Wales, in the case of accounts relating to sums within head (2) in the text, the Scottish Ministers, and in the case of accounts relating to sums within head (3) in the text, the Department of Finance and Personnel for Northern Ireland: Food Standards Act 1999 Sch 4 para 3(8). As to the Scottish Ministers see PARA 226 note 3 ante.

9 Ibid Sch 4 para 3(3). For the meaning of 'relevant authorities' see PARA 279 note 3 ante.

10 Ibid Sch 4 para 3(4). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 Food Standards Act 1999 Sch 4 para 3(5).

12 Ibid Sch 4 para 3(6).

13 Ibid Sch 4 para 3(7).

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

280 Accounts of the Food Standards Agency relating to sums paid or appropriated

TEXT AND NOTE 13--1999 Act Sch 4 para 3(7) amended: SI 2007/1388.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/2. ADMINISTRATION/(7) FINANCE/281. Consolidated accounts of the Food Standards Agency.

281. Consolidated accounts of the Food Standards Agency.

The Food Standards Agency¹ must prepare consolidated accounts for each financial year showing its income and expenditure and its overall state of affairs for that year². Such accounts must be prepared in such form (and include such documents), and be sent to the Comptroller and Auditor General³ and to the Treasury⁴ before such time, as the Treasury may direct after consulting the Agency and the other relevant authorities⁵. The Comptroller and Auditor General must examine any accounts so sent to him on behalf of the House of Commons⁶.

When any such accounts have been certified and reported on by the Comptroller and Auditor General, he must send the certified accounts and the report to the Treasury who must lay them before the House of Commons, and send copies of those documents to the other relevant authorities⁷. The Scottish Ministers⁸ must present documents so received to the Scottish Parliament and the Department of Finance and Personnel for Northern Ireland must present such documents to the Northern Ireland Assembly⁹.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Standards Act 1999 s 39(7), Sch 4 para 4(1).

3 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Food Standards Act 1999 Sch 4 para 4(2). For the meaning of 'relevant authorities' see PARA 279 note 3 ante.

6 Ibid Sch 4 para 4(3).

7 Ibid Sch 4 para 4(4).

8 As to the Scottish Ministers see PARA 226 note 3 ante.

9 Food Standards Act 1999 Sch 4 para 4(5). As to the Scottish Parliament see the Scotland Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Northern Ireland Assembly see the Northern Ireland Assembly Act 1973; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 70.

UPDATE

222-281 Administration

The Government of Wales Act 1998 has been replaced by the Government of Wales Act 2006, which re-establishes the National Assembly for Wales and establishes the Welsh Assembly government; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

281 Consolidated accounts of the Food Standards Agency

TEXT AND NOTES 8, 9--1999 Act Sch 4 para 4(5) amended: SI 2007/1388.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(1) UNSAFE FOOD/282. Rendering food injurious to health.

3. FOOD SAFETY AND HYGIENE

(1) UNSAFE FOOD

282. Rendering food injurious to health.

Subject to certain defences¹, any person who renders any food² injurious to health³ by means of any of the following operations:

- 75 (1) adding any article⁴ or substance⁵ to the food⁶;
- 76 (2) using any article or substance as an ingredient in the preparation of the food⁷;
- 77 (3) abstracting⁸ any constituent from the food⁹; or
- 78 (4) subjecting the food to any other process or treatment¹⁰,

with intent that it is to be sold¹¹ for human consumption¹², is guilty of an offence¹³.

Any food commonly used for human consumption which is sold or offered¹⁴, exposed¹⁵ or kept¹⁶ for sale is presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or be intended for sale for human consumption¹⁷. It is presumed, until the contrary is proved, that: (a) any food commonly used for human consumption which is found on premises¹⁸ used for the preparation, storage, or sale of that food; and (b) any article or substance commonly used in the manufacture of food for human consumption which is found on such premises, is intended for sale, or for manufacturing food for sale, for human consumption¹⁹.

'Injury', in relation to health, includes any impairment, whether permanent or temporary, and 'injurious to health' must be construed accordingly²⁰. In determining whether any food is injurious to health²¹, regard is to be had not only to the probable effect of that food on the health of a person consuming it but also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities²². Since regard is to be had to the 'probable' effect of the food, food is not injurious to health merely because exceptional people are liable to be injured; however an offence is committed if a substantial proportion of the community which is likely to use it would be injured²³.

1 See PARAS 465-467 post.

2 For the meaning of 'food' see PARA 201 ante.

3 See the text and notes 20-23 infra.

4 For the meaning of 'article' see PARA 201 note 3 ante.

5 For the meaning of 'substance' see PARA 201 note 4 ante.

6 Food Safety Act 1990 s 7(1)(a).

7 Ibid s 7(1)(b). For the meaning of 'preparation' see PARA 201 note 3 ante.

8 Although it is dangerous to draw too close an analogy with milk cases, where different considerations apply, see the following decisions on the meaning of 'abstract' in relation to milk: *Penrice v Brander* 1921 JC 63 (where to 'abstract' appears to have meant no more than a failure to correct the natural tendency of a

constituent to rise or fall in a liquid); *Bridges v Griffin* [1925] 2 KB 233. The same would appear to be true of the failure to prevent the escape of an evanescent constituent. See also *Dearden v Whiteley* (1916) 85 LJB 1420, DC, where it was held that dilution does not amount to abstraction.

9 Food Safety Act 1990 s 7(1)(c).

10 Ibid s 7(1)(d).

11 For the meaning of 'sale' see PARA 262 note 5 ante.

12 For the meaning of 'human consumption' see PARA 201 note 3 ante.

13 Food Safety Act 1990 s 7(1). Any person guilty of such an offence is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months or to both: s 35(2), (3). As to penalties see PARA 468 post.

It is clear that this offence requires no mens rea except in relation to intent that the food should be sold for human consumption: cf *Quality Dairies (York) Ltd v Pedley* [1952] 1 KB 275, [1952] 1 All ER 380, DC; *Gardner v Akeroyd* [1952] 2 QB 743, [1952] 2 All ER 306; and see also *Spiers and Pond v Bennett* [1896] 2 QB 65 at 72, DC, per Lord Russell CJ. As to strict liability see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 15. It follows that an employer is liable for his employee's acts within the scope of his employment: see *Houghton v Mundy* (1910) 103 LT 60; *Elder v Bishop Auckland Co-operative Society Ltd* (1917) 86 LJB 1412, DC; and TORT vol 97 (2010) PARA 690 et seq. This is not so where the employee acts outside the scope of his employment: see *Lindsay v Dempster* 1912 SC (J) 110; *Whittaker v Forshaw* [1919] 2 KB 419; and see also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 59 et seq.

14 In order that there may be an offer for sale there must be some evidence that the offer was communicated or put on its way, although it need not be proved that the offer reached the person to whom it was made: see *Wiles v Maddison* [1943] 1 All ER 315, DC (charge of offering excessive quantities of controlled foods at excessive prices contrary to emergency orders). In *Wiles v Maddison* supra, intention, but no offering, to sell was found: see *Fisher v Bell* [1961] 1 QB 394, [1960] 3 All ER 731, DC, in which it was decided that the exhibition of goods in a shop window does not constitute an offer to sell, and in which, in considering *Wiles v Maddison* supra, the court came to the conclusion that the case was decided on the fact that no act, but only an intention, was found. The court also considered *Keating v Horwood* (1926) 135 LT 29 (bread in a cart for delivery to customers), and held that it was only an authority on exposure for sale. See also *Mella v Monahan* [1961] Crim LR 175, DC. The issue of a handbill offering to sell an article is not necessarily the same thing as offering the article for sale: *World's Tea Co v Gardner* (1895) 59 JP 358. A mere offer to treat does not constitute an offer to sell: *Partridge v Crittenden* [1968] 2 All ER 421, [1968] 1 WLR 1204, DC (advertisement in 'for sale' column of periodical: 'brambling cocks, brambling hens, 25s. each'), where *Fisher v Bell* supra, *Mella v Monahan* supra, and the dictum of Lord Herschell in *Grainger & Son v Gough* [1896] AC 325, HL, were applied. As to offer and invitation to treat see CONTRACT vol 9(1) (Reissue) PARA 632 et seq.

15 An article may be exposed for sale even though it is wrapped and not in the view of the customer (*Wheat v Brown* [1892] 1 QB 418 (labelling offence in relation to margarine)), but if it is placed behind a screen or in a back room this may not be so (see *Crane v Lawrence* (1890) 25 QBD 152 (labelling of margarine)). Bread on a cart for delivery to customers has been held to be exposed for sale: see *Keating v Horwood* (1926) 135 LT 29; cf *Newton-in-Makerfield Urban Council v Lyon* (1900) 69 LJB 230 (mineral water on cart for delivery to customers not exposed for sale for the purposes of a local toll Act). Milk not intended to be sold as such but to be added to tea and other liquids sold is exposed for sale: see *McNair v Terroni* [1915] 1 KB 526 (offence under former legislation of refusal to sell to sampling officer). In *Ollett v Jordan* [1918] 2 KB 41, a case of seizure of unwholesome food for condemnation, food being delivered in pursuance of a special order was held to be exposed for sale so long as something remained to be done before the article became the property of the purchaser, but in *Clark v Strachan* 1940 JC 29, another case of refusal to sell to a sampling officer, food made to a customer's special order and on view in the shop pending delivery was held not to be exposed for sale, ie not exposed in order to attract offers to purchase from the public.

16 Cf cases cited on the meaning of 'possession for sale' and 'deposited for sale' in PARA 283 note 7 post.

17 Food Safety Act 1990 s 3(1), (2).

18 For the meaning of 'premises' see PARA 204 note 16 ante.

19 Food Safety Act 1990 s 3(1), (3).

20 Ibid s 7(3).

21 Ie for the purposes of ibid ss 7, 8(2): see the text and notes 1-13, 20 supra; and PARA 283 post.

22 Ibid s 7(2)(b).

23 *Cullen v McNair* (1908) 72 JP 376. A declaration, by label or otherwise, of the presence of the injurious ingredient is no defence: *Haigh v Aerated Bread Co Ltd* [1916] 1 KB 878.

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

282 Rendering food injurious to health

TEXT AND NOTES--Now, in determining the whether any food is injurious to health, regard is to be had to the matters specified by EC Regulation 178/2002 art 14(4): 1990 Act s 7(2) (replaced by the General Food Regulations 2004, SI 2004/3279). 1990 Act s 7(3) repealed: SI 2004/3279.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(1) UNSAFE FOOD/283. Selling food not complying with food safety requirements.

283. Selling food not complying with food safety requirements.

The Food Safety Act 1990 introduced a new offence of selling food not complying with food safety requirements which bridges the gap between offences about unfitness for human consumption and offences about selling food not of the substance or quality demanded¹. Any person who:

- 79 (1) sells² for human consumption³, or offers⁴, exposes⁵ or advertises⁶ for sale for such consumption, or has in his possession⁷ for the purpose of such sale or of preparation for such sale⁸; or
- 80 (2) deposits with, or consigns to, any other person for the purpose of such sale or of preparation for such sale⁹,

any food¹⁰ which fails to comply with food safety requirements is guilty of an offence¹¹.

Food fails to comply with food safety requirements if¹²:

- 81 (a) it has been rendered injurious to health¹³;
- 82 (b) it is unfit for human consumption¹⁴; or
- 83 (c) it is so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state¹⁵.

Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description¹⁶, it is presumed¹⁷, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements¹⁸.

1 See PARA 360 post.

2 For the meaning of 'sale' see PARA 262 note 5 ante.

3 For the meaning of 'human consumption' see PARA 201 note 3 ante.

4 As to food offered for sale see PARA 282 note 14 ante.

5 As to food exposed for sale see PARA 282 note 15 ante.

6 For the meaning of 'advertise' see PARA 225 note 5 ante.

7 'Possession' in this context appears to mean possession in fact by the person charged or his agent, irrespective of the strict legal position: *Webb v Baker* [1916] 2 KB 753, 80 JP 449, DC. The word 'should be given a popular and not a narrow construction': *Webb v Baker* supra at 759 and at 451 per Lord Reading CJ. In that case unsound rabbits delivered to the purchaser's premises by the vendor were held not to be in the vendor's possession notwithstanding that that might still be the position under the Sale of Goods Act 1893 (now the Sale of Goods Act 1979). Milk left at the place agreed in the contract for collection by the buyer has been held both not to be in the possession of the farmer selling it (*Oliver v Goodger* [1944] 2 All ER 481, DC) and to be still in his possession (*Kilsby v Horsford* (1949) 93 Sol Jo 601, 47 LGR 610, DC; *Challand v Bartlett* [1953] 2 All ER 832, [1953] 1 WLR 1105, DC). Distributors of meat to butchers acting for the Ministry of Defence who did not select the meat they were given to distribute were in possession of it: *Ollett v Henry* [1919] 2 KB 88, 88 LJKB 998, DC. Meat put, still sound, in a safe at a shop at midnight on Saturday and kept there without the safe being opened until examined by an inspector 36 hours later, was held not to be 'deposited for sale': *Wieland v Butler-Hogan* (1904) 68 JP 310, 73 LJKB 513, DC. The bailor of goods which can be recovered on demand is in possession of

them for this purpose: *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68, DC; *City Fur Manufacturing Co Ltd v Fureenbond (Brokers) London Ltd* [1937] 1 All ER 799, DC.

8 Food Safety Act 1990 s 8(1)(a). For the meaning of 'preparation' see PARA 201 note 3 ante. 'Preparation for sale' includes packaging, and 'prepare for sale' is to be construed accordingly: s 53(1).

9 Ibid s 8(1)(b).

10 For the meaning of 'food' see PARA 201 ante.

11 Food Safety Act 1990 s 8(1). As to defences and penalties see PARAS 465-468 post.

12 Ibid s 8(2).

13 Ibid s 8(2)(a). The food may have been rendered injurious to health by means of any of the operations mentioned in s 7(1) (see PARA 282 ante): s 8(2)(a). For the meaning of 'injurious to health' see PARA 282 ante.

14 Ibid s 8(2)(b).

15 Ibid s 8(2)(c).

16 Any class or description may be framed by reference to any matters or circumstances whatever, including in particular, in the case of a description of food, the brand name under which it is commonly sold: ibid s 53(4).

17 Ie for the purposes of ibid ss 8, 9: see the text and notes 1-15 supra; and PARA 284 post.

18 Ibid s 8(3).

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

283 Selling food not complying with food safety requirements

TEXT AND NOTES--Replaced.

For the purposes of the Food Safety Act 2000 Pt II food fails to comply with food safety requirements if it is unsafe within the meaning of EC Council Regulation 178/2002 art 14 and references to food safety requirements or to food complying with such requirements will be construed accordingly¹.

¹ Food and Safety Act 2000 s 8(2) (replaced by the General Food Regulations 2004, SI 2004/3279).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/284. Inspection and seizure of suspected food.

(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD

284. Inspection and seizure of suspected food.

An authorised officer of a food authority¹ may at all reasonable times inspect any food² intended for human consumption³ which has been sold⁴ or is offered⁵ or exposed for sale⁶, or is in the possession⁷ of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale⁸. The authorised officer has certain powers⁹ where, on such an inspection, it appears to him that any food fails to comply with food safety requirements¹⁰ and also where, otherwise than on such an inspection, it appears to an authorised officer of a food authority that any food is likely to cause food poisoning or any disease communicable to human beings¹¹. The powers are to:

- 84 (1) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it¹²: (a) is not to be used for human consumption¹³; and (b) either is not to be removed or is not to be removed except to some place specified in the notice¹⁴; or
- 85 (2) seize the food and remove it in order to have it dealt with by a justice of the peace¹⁵.

Any person who knowingly¹⁶ contravenes¹⁷ the requirements of a notice under head (1) above is guilty of an offence¹⁸.

Where the authorised officer exercises the powers conferred by head (1) above, he must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied¹⁹ that the food complies with food safety requirements²⁰. If he is so satisfied, he must forthwith withdraw the notice²¹, and if he is not so satisfied, he must seize the food and remove it in order to have it dealt with by a justice of the peace²².

If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any such food falling to be dealt with by him fails to comply with food safety requirements, he must condemn the food and order the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption²³.

If a notice under head (1) above is withdrawn, or the justice of the peace by whom any such food falls to be dealt with refuses to condemn it, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer²⁴. Any disputed question as to the right to or the amount of any compensation so payable is to be determined by arbitration²⁵.

1 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante; and for the meaning of 'food authority' see PARA 251 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 For the meaning of 'human consumption' see PARA 201 note 3 ante.

4 For the meaning of 'sale' see PARA 262 note 5 ante.

5 As to food offered for sale see PARA 282 note 14 ante.

- 6 As to food exposed for sale see PARA 282 note 15 ante.
- 7 See PARA 283 note 7 ante.
- 8 Food Safety Act 1990 s 9(1). For the meaning of 'preparation for sale' see PARA 283 note 8 ante.
- 9 le under ibid s 9(3): see the text and notes 12-15 infra.
- 10 Ibid s 9(1). As to food safety requirements see PARA 283 ante.
- 11 Ibid s 9(2).
- 12 Ibid s 9(3)(a). For the form of the detention of food notice to be given by an authorised officer under s 9(3)(a) see the Detention of Food (Prescribed Forms) Regulations 1990, SI 1990/2614, reg 2, Schedule Pt I para 1, Pt II Form 1.
- 13 Food Safety Act 1990 s 9(3)(a)(i).
- 14 Ibid s 9(3)(a)(ii).
- 15 Ibid s 9(3)(b). Where an authorised officer exercises the powers conferred by s 9(3)(b), he must inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and any person who under s 7 (see PARA 282 ante) or s 8 (see PARA 283 ante) might be liable to a prosecution in respect of the food must, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses: s 9(5)(a). The justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under s 7 or s 8 in relation to that food: s 9(5)(b). A food condemnation warning notice authorised or required by s 9(5) to be given for the purpose of informing a person in charge of food of the intention of an authorised officer to have food dealt with by a justice of the peace must be given in the form specified in the Detention of Food (Prescribed Forms) Regulations 1990, SI 1990/2614, Schedule Pt I para 3, Pt II Form 3.
- 16 As to the degree of knowledge required see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8 et seq.
- 17 For the meaning of 'contravention' see PARA 204 note 2 ante.
- 18 Food Safety Act 1990 s 9(3).
- 19 If the authorised officer is honestly satisfied, or honestly not satisfied, it is irrelevant whether or not he has taken reasonable care to satisfy himself: *Harward v Hackney Union and Frost* (1898) 14 TLR 306, CA; *Everett v Griffiths* [1920] 3 KB 163, CA (affirmed [1921] 1 AC 631, HL).
- 20 Food Safety Act 1990 s 9(4).
- 21 Ibid 1990 s 9(4)(a). For the form of the withdrawal of detention of food notice authorised or required under s 9(4)(a) see the Detention of Food (Prescribed Forms) Regulations 1990, SI 1990/2614, Schedule Pt I para 2, Pt II Form 2.
- 22 Food Safety Act 1990 s 9(4)(b). Where an authorised officer exercises the powers conferred by s 9(4)(b), he must inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and any person who under s 7 (see PARA 282 ante) or s 8 (see PARA 283 ante) might be liable to a prosecution in respect of the food must, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses: s 9(5)(a). The justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under s 7 or s 8 in relation to that food: s 9(5)(b).
- 23 Ibid s 9(6). Any expenses reasonably incurred in connection with the destruction or disposal must be defrayed by the owner of the food: s 9(6). A justice of the peace acting under s 9 is acting administratively rather than sitting as a court of summary jurisdiction and there is no right of appeal: *R v Cornwall Quarter Sessions Appeal Committee, ex p Kerley* [1956] 2 All ER 872, [1956] 1 WLR 906, DC.
- 24 Ibid s 9(7).
- 25 Ibid s 9(8). As to arbitration under s 9(8) see the Arbitration Act 1996; and ARBITRATION.

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

284 Inspection and seizure of suspected food

NOTE 10--Food Safety Act 1990 s 9(1) amended: SI 2004/3279.

NOTE 23--See *R (on the application of the Food Standards Agency) v Brent Justices and Kelman's Kosher Products* [2004] EWHC 459 (Admin), (2004) 168 JP 241.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/285. Improvement notices.

285. Improvement notices.

An authorised officer of an enforcement authority¹ may serve an improvement notice on the proprietor² of a food business³ if he has reasonable grounds for believing⁴ that the proprietor is failing to comply with any regulations to which the power to serve such notices applies⁵. The notice must:

- 86 (1) state the officer's grounds for believing that the proprietor is failing to comply with the regulations⁶;
- 87 (2) specify the matters which constitute the proprietor's failure so to comply⁷;
- 88 (3) specify the measures which, in the officer's opinion, the proprietor must take in order to secure compliance⁸; and
- 89 (4) require the proprietor to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice⁹.

Before serving such a notice, the officer must give written notice to the proprietor that he is considering serving an improvement notice and the reasons why he is considering doing so¹⁰. The notice must also state that the proprietor may within the period specified in the notice, either make written representations or make oral representations to the officer in the presence of a senior officer of the enforcement authority¹¹.

Any person who fails to comply with an improvement notice is guilty of an offence¹².

Appeal against an improvement notice is to a magistrates' court by way of complaint within one month from the date on which notice of the decision was served or the period specified in the improvement notice, whichever ends the earlier¹³. On an appeal against an improvement notice, the court may either cancel or affirm it and, if it affirms it, may do so either in its original form or with such modifications as it may in the circumstances think fit¹⁴. Where, apart from this provision, any period specified in an improvement notice would include any day on which an appeal against that notice is pending, that day is to be excluded from that period¹⁵.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 'Proprietor', in relation to a food business, means the person by whom that business is carried on: Food Safety Act 1990 s 53(1).

3 For the meaning of 'food' see PARA 1006 ante; and for the meaning of 'food business' see PARA 241 note 11 ante.

4 It is submitted that the phrase 'reasonable grounds for believing' will be interpreted in the same way as the more usual 'reasonable cause to believe': see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA; *Nakkuda Ali v Jayaratne* [1951] AC 66, PC. The knowledge of a junior employee which would undermine an employer's reasonable belief if he were aware of it, will not cause the employer no longer to have 'reasonable grounds': see *Readers Digest Association Ltd v Pirie* 1973 SLT 170, HC. The improvement notice must state the officer's grounds for believing that the proprietor was failing to comply with regulations: see notes 6-7 infra.

5 Food Safety Act 1990 s 10(1). The power to issue improvement notices applies to any regulations under Pt II (ss 7-26) (as amended) which make provision for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food, or for securing the observance of hygienic conditions and practices in

connection with the carrying out of commercial operations with respect to food or food sources: s 10(3). For the meaning of 'treatment' see PARA 201 note 3 ante. For the meaning of 'preparation' see PARA 201 note 3 ante. For the meaning of 'commercial operation' see PARA 241 note 11 ante. For the meaning of 'food source' see PARA 201 ante. As to regulations or orders made under the Food Safety Act 1990 see PARA 243 note 3 ante.

6 Ibid s 10(1)(a).

7 Ibid s 10(1)(b). Requirements to state the officer's grounds for believing that the proprietor is failing to comply with regulations and the matters which constitute that failure are mandatory and without such statements the notice is invalid: see *Bexley London Borough Council v Gardner Merchant plc* [1993] COD 383, DC (where the improvement notice stated that the proprietor failed to comply with the Food Hygiene (General) Regulations 1970, SI 1970/1172, reg 18 (now revoked) because 'a conveniently accessible wash hand basin with a supply of hot and cold water or hot water at a suitably controlled temperature' was not provided to the serving area. The Divisional Court upheld the justice's decision that the notice did not make it clear in which respect the respondent had failed to comply with reg 18 (as originally enacted) because the wording had been interpreted in several different ways).

8 Food Safety Act 1990 s 10(1)(c).

9 Ibid s 10(1)(d).

10 Deregulation (Improvement of Enforcement Procedures) (Food Safety Act 1990) Order 1996, SI 1996/1683, art 3(a)(i).

11 Ibid art 3(a)(ii). Any representations duly made and not withdrawn must be considered by the authorised officer: art 3(b). The period to be specified in the notice is not prescribed by the regulations.

12 Food Safety Act 1990 s 10(2). As to defences and penalties see PARAS 465-468 post.

13 See *ibid* s 37; and PARA 287 post. An appeal may be brought under s 37 or s 38: see PARAS 287, 469 post.

14 Ibid s 39(1). The modification cannot amend or relax the regulations themselves: *Salford City Council v Abbeyfield (Worsley) Society Ltd* [1993] COD 384, DC.

15 Food Safety Act 1990 s 39(2). An appeal is regarded as pending for this purpose until it is finally disposed of, is withdrawn or is struck out for want of prosecution: s 39(3).

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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NOTE 2--The proprietor is the person by whom the business is carried on, but need not be the owner of the business, nor involved in the daily running of it: *Ahmed v Nicholls* [2000] EHLR 182; *Greene King plc v Harlow DC* [2003] EWHC 2852 (Admin), [2004] 2 All ER 102.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/286. Prohibition orders.

286. Prohibition orders.

The court must by an order impose the appropriate prohibition¹ if (1) the proprietor² of a food business³ is convicted of an offence under any regulations to which the power to make prohibition orders applies; and (2) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to that business⁴.

The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury⁵ to health⁶:

- 90 (a) the use for the purposes of the business of any process or treatment⁷;
- 91 (b) the construction of any premises⁸ used for the purposes of the business, or the use for those purposes of any equipment⁹; and
- 92 (c) the state or condition of any premises or equipment used for the purposes of the business¹⁰.

The appropriate prohibition is:

- 93 (i) in a case falling within head (a) above, a prohibition on the use of the process or treatment for the purposes of the business¹¹;
- 94 (ii) in a case falling within head (b) above, a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description¹²;
- 95 (iii) in a case falling within head (c) above, a prohibition on the use of the premises or equipment for the purposes of any food business¹³.

The court may, by an order, impose a prohibition on any proprietor participating in the management of any food business, or any food business of a class or description specified in the order if (A) the proprietor of a food business is convicted of an offence under any regulations under Part II of the Food Safety Act 1990¹⁴ which make provision for securing the observance of hygienic conditions and practices¹⁵; and (B) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case¹⁶.

A person who is aggrieved by any decision of a magistrates court to make a prohibition order may appeal to the Crown Court¹⁷.

As soon as practicable after the making of a prohibition order¹⁸, the enforcement authority¹⁹ must serve a copy of the order on the proprietor of the business²⁰, and in the case of an order where the health risk condition is fulfilled²¹, affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as it considers appropriate²². Any person who knowingly contravenes²³ such an order is guilty of an offence²⁴.

A prohibition order ceases to have effect in the case of an order under head (1) or (2) above, on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business²⁵. In the case of an order under head (A) or head (B) above the prohibition order ceases to have effect on the giving by the court of a direction to that effect²⁶. Appeal against refusal to issue such a certificate is by way of complaint to a

magistrates' court within one month from the date upon which notice of the decision was served²⁷.

- 1 As to the appropriate prohibition see the text and notes 11-13 infra.
- 2 For the meaning of 'proprietor' see PARA 285 note 2 ante.
- 3 For the meaning of 'food' see PARA 201 ante; for the meaning of 'food business' see PARA 241 note 11 ante; and for the meaning of 'business' see PARA 201 note 3 ante.
- 4 Food Safety Act 1990 s 11(1). Prohibition orders apply to any regulations under Pt II (ss 7-26) (as amended) which make provision for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food, or for securing the observance of hygiene conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources: s 10(3). As to regulations or orders made under the Food Safety Act 1990 see PARA 243 note 3 ante. For the meaning of 'treatment' see PARA 201 note 3 ante; for the meaning of 'preparation' see PARA 201 note 3 ante; for the meaning of 'commercial operation' see PARA 241 note 11 ante; and for the meaning of 'food source' see PARA 201 ante. Where a magistrates' court makes an emergency prohibition order under s 12(2) (see PARA 287 post) with respect to any food business, s 11(1) applies as if the proprietor of the business had been convicted by the court of an offence under regulations to which s 11 applies: s 11(9).
- 5 For the meaning of 'injury' see PARA 282 ante.
- 6 Food Safety Act 1990 s 11(2).
- 7 Ibid s 11(2)(a).
- 8 For the meaning of 'premises' see PARA 204 note 16 ante.
- 9 Food Safety Act 1990 s 11(2)(b). For the meaning of 'equipment' see PARA 206 note 9 ante.
- 10 Ibid s 11(2)(c).
- 11 Ibid s 11(3)(a).
- 12 Ibid s 11(3)(b).
- 13 Ibid s 11(3)(c).
- 14 Ie the Food Safety Act 1990 Pt II (ss 7-26) (as amended).
- 15 Ie by virtue of ibid s 10(3)(b): see PARA 285 note 5 ante.
- 16 Ibid s 11(4). See also note 20 infra.
- 17 See ibid s 38(b). As to appeals see PARA 469 post.
- 18 Ie under ibid s 11(1) or s 11(4): see the text and notes 2-4, 15-16 supra.
- 19 For the meaning of 'enforcement authority' see PARA 222 ante.
- 20 The Food Safety Act 1990 s 11(4) applies in relation to a manager of a food business as it applies in relation to the proprietor of such a business; and any reference in s 11(5) (see the text to notes 22-24 infra) or s 11(8) (see note 26 infra) to the proprietor of the business, or to the proprietor, must be construed accordingly: s 11(10). 'Manager', in relation to a food business, means any person who is entrusted by the proprietor with the day to day running of the business, or any part of the business: s 11(11).
- 21 Ie under the Food Safety Act 1990 s 11(1): see the text and notes 2-4 supra.
- 22 Ibid s 11(5).
- 23 For the meaning of 'contravention' see PARA 204 note 2 ante. As to the degree of knowledge required see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8 et seq.
- 24 Food Safety Act 1990 s 11(5). As to defences and penalties see PARAS 465-468 post.

25 Ibid s 11(6)(a). The enforcement authority must issue a certificate under s 11(6)(a) within three days of its being so satisfied, and on an application by the proprietor for such a certificate, the authority must determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied: s 11(7)(a). If it determines that it is not so satisfied, it must give notice to the proprietor of the reasons for that determination (s 11(7)(b)).

Where, apart from s 53(5), any period of less than seven days which is specified in the Food Safety Act 1990 would include any day which is: (1) a Saturday, a Sunday, Christmas Day or Good Friday; or (2) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321) in the part of Great Britain concerned, that day must be excluded from that period: Food Safety Act 1990 s 53(5). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

26 Ibid s 11(6)(b). The court must give a direction under s 11(6)(b) if, on an application by the proprietor, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the proprietor since the making of the order: s 11(8). However, no such application may be entertained if it is made within six months after the making of the prohibition order (s 11(8)(a)); or within three months after the making by the proprietor of a previous application for such a direction (s 11(8)(b)). As to references to 'proprietor' see note 20 supra.

27 See ibid s 37; and PARA 287 post.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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NOTE 5--Injury now includes any impairment, whether permanent or temporary: 1990 Act s 11(2A) (added by SI 2004/3279).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/287. Emergency prohibition notices and orders.

287. Emergency prohibition notices and orders.

If an authorised officer of an enforcement authority¹ is satisfied that the health risk condition² is fulfilled with respect to any food business³, he may, by a notice served on the proprietor⁴ of the business, impose the appropriate prohibition⁵. This is called an 'emergency prohibition notice'. As soon as practicable⁶ after the service of an emergency prohibition notice, the enforcement authority must affix a copy of the notice in a conspicuous position on such premises⁷ used for the purposes of the business as it considers appropriate⁸, and any person who knowingly contravenes⁹ such a notice is guilty of an offence¹⁰. An emergency prohibition notice ceases to have effect, if no application for an emergency prohibition order is made within the period of three days¹¹ beginning with the service of the notice, at the end of that period¹² or if such an application is so made, on the determination or abandonment of the application¹³.

If a magistrates' court is satisfied, on the application of an authorised officer, that the health risk condition is fulfilled with respect to any food business, the court must, by an order, impose the appropriate prohibition¹⁴. This is called an 'emergency prohibition order'. Such an officer may not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the proprietor of the business of his intention to apply for the order¹⁵. As soon as practicable¹⁶ after the making of an emergency prohibition order, the enforcement authority must serve a copy of the order on the proprietor of the business, and affix a copy of the order in a conspicuous position on such premises used for the purposes of that business as it considers appropriate¹⁷. Any person who knowingly contravenes such an order is guilty of an offence¹⁸. A person who is aggrieved by any decision of a magistrates court to make an emergency prohibition order may appeal to the Crown Court¹⁹.

An emergency prohibition notice or emergency prohibition order ceases to have effect on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business²⁰. The enforcement authority must issue such a certificate within three days²¹ of its being so satisfied, and on an application by the proprietor for such a certificate, the authority must²²: (1) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied²³; and (2) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination²⁴.

Where an emergency prohibition notice is served on the proprietor of a business, the enforcement authority must compensate him in respect of any loss suffered by reason of his complying with the notice unless²⁵: (a) an application for an emergency prohibition order is made within the period of three days beginning with the service of the notice²⁶; and (b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was served²⁷.

Any disputed question as to the right to or the amount of any compensation so payable is to be determined by arbitration²⁸.

1 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante; and for the meaning of 'enforcement authority' see PARA 222 ante.

2 As to the health risk condition see the Food Safety Act 1990 s 11(2) (see PARA 286 ante); applied by s 12(4). But for these purposes, the reference in s 11(2) to risk of injury to health is to be replaced with a reference to imminent risk of such injury: see s 12(4).

3 For the meaning of 'food' see PARA 201 ante; for the meaning of 'food business' see PARA 241 note 11 ante; and for the meaning of 'business' see PARA 201 note 3 ante.

4 For the meaning of 'proprietor' see PARA 282 note 2 ante.

5 Food Safety Act 1990 s 12(1). As to the 'appropriate prohibition' see s 11(3) (see PARA 286 ante); applied by s 12(4).

6 The phrase 'as soon as practicable' has received judicial interpretation in respect of other safety legislation, such as the Factories Act 1961 (see HEALTH AND SAFETY AT WORK). It appears to mean 'capable of being carried out in action - feasible': see *Lee v Nursery Furnishings Ltd* [1945] 1 All ER 387, 172 LT 285, CA; *Adsett v K and L Steelfounders and Engineers Ltd* [1953] 2 All ER 320, [1953] 1 WLR 773, CA; *Richards v Highway Ironfounders (West Bromwich) Ltd* [1955] 3 All ER 205, [1955] 1 WLR 1049, CA; and *Gregson v Hick Hargreaves & Co Ltd* [1955] 3 All ER 507, [1955] 1 WLR 1252, CA.

7 For the meaning of 'premises' see PARA 204 note 16 post.

8 Food Safety Act 1990 s 12(5).

9 For the meaning of 'contravention' see PARA 204 note 2 ante. As to the degree of knowledge required see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8 et seq.

10 Food Safety Act 1990 s 12(5). As to defences and penalties see PARAS 465-468 post.

11 See PARA 286 note 25 ante.

12 Food Safety Act 1990 s 12(7)(a).

13 Ibid s 12(7)(b).

14 Ibid s 12(2).

15 Ibid s 12(3).

16 See note 6 supra.

17 Food Safety Act 1990 s 12(6).

18 Ibid s 12(6).

19 See ibid s 38(b).

20 Ibid s 12(8). Appeal against refusal to issue such a certificate is by way of complaint to a magistrates' court within one month of the date upon which notice of the decision was served: s 37.

21 See note 11 supra.

22 Food Safety Act 1990 s 12(9).

23 Ibid s 12(9)(a).

24 Ibid s 12(9)(b).

25 Ibid s 12(10).

26 Ibid s 12(10)(a). An application is made if it is lodged with the court within three days, even if the hearing takes place later: *Farrand v Tse* (1992) Times, 10 December, DC.

27 Food Safety Act 1990 s 12(10)(b).

28 Ibid s 12(10). As to arbitration under s 10 see the Arbitration Act 1996; and ARBITRATION.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/288. Emergency control orders.

288. Emergency control orders.

If it appears to the Secretary of State¹ that the carrying out of commercial operations² with respect to food³, food sources⁴ or contact materials⁵ of any class or description⁶ involves or may involve imminent risk of injury⁷ to health, he may, by an order, prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description⁸. This is called an 'emergency control order'. Arrangements may be made between the Secretary of State and the Food Standards Agency⁹ authorising the Agency to exercise on behalf of the Secretary of State the power to make emergency control orders¹⁰.

An emergency control order is susceptible to judicial review¹¹. In addition to the traditional grounds for judicial review¹², two further considerations apply: (1) whether the interference with free circulation of goods within the European Union is justifiable on grounds of protection of health and life of humans¹³; and (2) whether the fact that since compensation is not payable to the owner of food subject to such an order, this violates the fundamental right, provided by the European Convention on Human Rights, not to be deprived of possessions except in the public interest subject to the conditions provided for by law¹⁴. The legal test in relation to both the European Union and the European Convention on Human Rights is one of proportionality and the Secretary of State has a margin of appreciation in making a decision balancing the interests of the public and those of private individuals¹⁵.

Any person who knowingly contravenes¹⁶ an emergency control order is guilty of an offence¹⁷. However, it is a defence for a person charged with such an offence to show that consent had been given¹⁸ to the contravention of the emergency control order, and that any condition subject to which that consent was given was complied with¹⁹. The Secretary of State, or the Agency, may consent, either unconditionally or subject to any condition that the authority giving the consent considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order²⁰.

The Secretary of State or the Agency may give such directions as appear to the authority giving the directions to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food sources or contact materials which the authority giving the directions believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies, and may do anything which appears to the authority giving the directions to be necessary or expedient for that purpose²¹. Any person who fails to comply with such a direction is guilty of an offence²².

If the Secretary of State or the Agency does anything in consequence of any person failing to comply with an emergency control order or an associated direction, that authority may recover from that person any expenses reasonably incurred²³.

1 As to the Secretary of State see PARA 224 ante.

2 For the meaning of 'commercial operation' see PARA 241 note 11 ante.

3 For the meaning of 'food' see PARA 201 ante.

4 For the meaning of 'food source' see PARA 201 ante.

5 For the meaning of 'contact material' see PARA 241 note 11 ante.

6 For the meaning of 'class' or 'description' see PARA 283 note 16 ante.

7 For the meaning of 'injury' see PARA 282 ante.

8 Food Safety Act 1990 s 13(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). If the powers of a food authority to inspect and seize suspected food will be sufficiently effective in the circumstances of the case, then those powers should be used rather than the power to make an emergency control order: *R v Secretary of State for Health, ex p Eastside Cheese Co* [1999] 3 CMLR 123, CA. Factors which may be taken into account by the Secretary of State in determining whether or not an emergency control order may be used to address a food safety problem include whether or not a satisfactory sampling programme to identify unsafe items of the suspect food can be devised, the degree of risk to human health, the fact that different food authorities may act with different degrees of urgency and could not be compelled to act, the fact that any food authority may resist taking formal action (in particular because of the danger of legal costs falling on it if its action were challenged in court or because of its liability to pay compensation where food was seized but was subsequently found not to be unsafe): *R v Secretary of State for Health, ex p Eastside Cheese Co* supra. The obligation to pay compensation arises under the Food Safety Act 1990 s 9: see PARA 284 ante.

In exercise of the power under s 13(1), the following orders have been made: the Food (Pistachios from Iran) (Emergency Control) Order 1997, SI 1997/2238 (amended by SI 1997/3046; SI 2000/656); the Food (Peanuts from Egypt) (Emergency Control) (England and Wales) Order 2000, SI 2000/375 (amended by SI 2000/656).

9 As to the establishment of the Food Standards Agency see PARA 225 ante.

10 Food Standards Act 1999 s 17(1)(b).

11 *R v Secretary of State for Health, ex p Eastside Cheese Co* [1999] 3 CMLR 123, CA. As to judicial review see CIVIL PROCEDURE; JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

12 Ie illegality, irrationality and procedural impropriety: see JUDICIAL REVIEW vol 61 (2010) PARA 602.

13 *R v Secretary of State for Health, ex p Eastside Cheese Co* [1999] 3 CMLR 123, CA. The prohibition on the interference with free circulation and the justification on grounds of protection of health and life of humans is contained in the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmd 5179) art 36.

14 Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) First Protocol, art 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 165); *R v Secretary of State for Health, ex p Eastside Cheese Co* [1999] 3 CMLR 123, CA.

15 *R v Secretary of State for Health, ex p Eastside Cheese Co* [1999] 3 CMLR 123, CA.

16 For the meaning of 'contravention' see PARA 204 note 2 ante. As to the degree of knowledge required see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 8 et seq.

17 Food Safety Act 1990 s 13(2). As to defences and penalties see PARAS 465-468 post.

18 Ie consent given under *ibid* s 13(3): see note 23 infra.

19 *Ibid* s 13(4) (amended by the Food Standards Act 1999 Sch 5 paras 11(1), (2)).

20 Food Safety Act 1990 s 13(3) (amended by the Food Standards Act 1999 Sch 5 paras 11(1), (2)).

21 Food Safety Act 1990 s 13(5)(b) (amended by the Food Standards Act 1999 Sch 5 para 11).

22 Food Safety Act 1990 s 13(6).

23 Food Safety Act 1990 s 13(7) (amended by the Food Standards Act 1999 Sch 5 para 11).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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TEXT AND NOTES--See also the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002, SI 2002/1798; the Food (Jelly Mini-Cups) (Emergency Control) (England) Regulations 2009, SI 2009/3230; and the Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009, SI 2009/3379 (amended by SI 2010/1376).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(2) POWERS OF AUTHORITIES IN RELATION TO UNSAFE FOOD/289. Power to make regulations in relation to food safety and consumer protection.

289. Power to make regulations in relation to food safety and consumer protection.

The Secretary of State¹ may by regulations make²:

- 96 (1) provision for requiring, prohibiting or regulating the presence in food or food sources of any specified substance³, or any substance of any specified class, and generally for regulating the composition of food⁴;
- 97 (2) provision for securing that food is fit for human consumption and meets such microbiological standards (whether going to the fitness of the food or otherwise) as may be specified by or under the regulations⁵;
- 98 (3) provision for requiring, prohibiting or regulating the use of any process or treatment⁶ in the preparation⁷ of food⁸;
- 99 (4) provision for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations⁹ with respect to food or food sources¹⁰;
- 100 (5) provision for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking, presenting¹¹ or advertising¹² of food, and the descriptions which may be applied to food¹³; and
- 101 (6) such other provision with respect to food or food sources, including in particular provision for prohibiting or regulating the carrying out of commercial operations with respect to food or food sources, as appears to him to be necessary or expedient¹⁴ for the purpose of securing that food complies with food safety requirements or in the interests of the public health¹⁵, or for the purpose of protecting or promoting the interests of consumers¹⁶.

The Secretary of State may also by regulations make provision¹⁷:

- 102 (a) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to contact materials which are intended to come into contact with food intended for human consumption¹⁸;
- 103 (b) for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking or advertising of such materials, and the descriptions which may be applied to them¹⁹; and
- 104 (c) otherwise for prohibiting or regulating the carrying out of commercial operations with respect to such materials²⁰.

Without prejudice to the generality of heads (1) to (3) above, provision may also be made in relation to²¹:

- 105 (i) the composition of food²²;
- 106 (ii) the fitness of food²³;
- 107 (iii) the processing and treatment of food²⁴;
- 108 (iv) food hygiene²⁵;
- 109 (v) the production of food sources²⁶; and
- 110 (vi) the inspection of food sources²⁷.

1 As to the Secretary of State see PARA 224 ante.

2 Food Safety Act 1990 s 16(1) (amended by the Food Standards Act 1999 s 40(1), Sch 5 paras 7, 8). In making regulations under the Food Safety Act 1990 s 16(1) (as amended) the Secretary of State must have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods: s 16(4) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8). In the Food Safety Act 1990 s 16(1), Sch 1, unless the context otherwise requires: (1) references to food are to be construed as references to food intended for sale for human consumption; and (2) references to food sources are to be construed as references to food sources from which such food is intended to be derived: s 16(5). For the meaning of 'food' generally see PARA 201 ante. For the meaning of 'food source' generally see PARA 201 ante. For the meaning of 'human consumption' see PARA 201 note 3 ante. For the meaning of 'sale' see PARA 262 note 5 ante.

Numerous regulations have been made in exercise of the power under s 16 (as amended) and are set out elsewhere in this title.

3 For the meaning of 'substance' see PARA 201 note 4 ante.

4 Food Safety Act 1990 s 16(1)(a).

5 Ibid s 16(1)(b).

6 For the meaning of 'treatment' see PARA 201 note 3 ante.

7 For the meaning of 'preparation' see PARA 201 note 3 ante.

8 Food Safety Act 1990 s 16(1)(c).

9 For the meaning of 'commercial operation' see PARA 241 note 11 ante.

10 Food Safety Act 1990 s 16(1)(d).

11 For the meaning of 'presentation' see PARA 225 note 5 ante.

12 For the meaning of 'advertisement' see PARA 225 note 5 ante.

13 Food Safety Act 1990 s 16(1)(e).

14 Ibid s 16(1)(f).

15 Ibid s 16(1)(f)(i).

16 Ibid s 16(1)(f)(ii).

17 Ibid s 16(2) (amended by the Food Standards Act 1999 Sch 5 paras 7, 8).

18 Food Safety Act 1990 s 16(2)(a).

19 Ibid s 16(2)(b).

20 Ibid s 16(2)(c).

21 Ibid s 16(3).

22 Provision may be made for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food, or prohibiting or regulating the possession of any such substance for use in the preparation of food: *ibid* s 16(3), Sch 1 para 1.

23 Provision may be made for prohibiting the sale for human consumption, or the use in the manufacture of products for sale for such consumption, of food derived from a food source which is suffering or has suffered from, or which is liable to be suffering or to have suffered from, any specified disease: *ibid* Sch 1 para 2(1). Provision may also be made for prohibiting or regulating, or for enabling enforcement authorities to prohibit or regulate the sale for human consumption, or the offer, exposure or distribution for sale for such consumption, of shellfish taken from beds or other layings designated for the time being: Sch 1 para 2(2). For the meaning of 'enforcement authority' see PARA 222 ante. Provision may also be made for regulating generally the treatment and disposal of any food which is unfit for human consumption, or which, though not unfit for human consumption, is not intended for, or is prohibited from being sold for, such consumption: Sch 1 para 3(1). There

may also be provision for the registration by enforcement authorities of premises used or proposed to be used for the purpose of sterilising meat to which Sch 1 para 3(1) applies, and for prohibiting the use for that purpose of any premises which are not registered in accordance with the provisions, or for the issue by such authorities of licences in respect of the use of premises for the purpose of sterilising such meat, and for prohibiting the use for that purpose of any premises except in accordance with a licence: Sch 1 para 3(2). For the meaning of 'premises' see PARA 204 note 16 ante.

24 Provision may be made for: (1) the giving by persons possessing such qualifications as may be prescribed of written opinions with respect to the use of any process or treatment in the preparation of food, and for prohibiting the use for any such purpose of any process or treatment except in accordance with an opinion given under the provisions; or (2) the issue by enforcement authorities of licences in respect of the use of any process or treatment in the preparation of food, and for prohibiting the use for any such purpose of any process or treatment except in accordance with a licence issued under the provisions: *ibid* Sch 1 para 4.

25 Provision may be made for imposing requirements as to: (1) the construction, maintenance, cleanliness and use of food premises, including any parts of such premises in which equipment and utensils are cleaned, or in which refuse is disposed of or stored; (2) the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises; and (3) the disposal of refuse from such premises: *ibid* Sch 1 para 5(1). Provision may be made for imposing requirements as to the maintenance and cleanliness of equipment or utensils used for the purposes of a food business, and the use, for the cleaning of equipment used for milking, of cleaning approved agents: Sch 1 para 5(2). Provision may also be made for requiring persons who are or intend to become involved in food businesses, whether as proprietors or employees or otherwise, to undergo such food hygiene training as may be specified: Sch 1 para 5(3). Provision may be made for imposing responsibility for compliance with any requirements imposed by virtue of Sch 1 para 5(1) in respect of any premises on the occupier of the premises, and in the case of requirements of a structural character, on any owner of the premises who either lets them for use for a purpose to which the provisions apply, or permits them to be so used after notice from the authority charged with the enforcement of the regulations: Sch 1 para 6(1). Provision may also be made for conferring in relation to particular premises, subject to such limitations and safeguards as may be specified, exemptions from the operation of specified provisions, and are made by virtue of Sch 1 para 5(1), while there is in force a certificate of the enforcement authority to the effect that compliance with those provisions cannot reasonably be required with respect to the premises or any activities carried on in them: Sch 1 para 6(2). For the meaning of 'food premises' see PARA 241 note 11 ante. For the meaning of 'food business' see PARA 241 note 11 ante. For the meaning of 'proprietor' see PARA 285 note 2 ante. For the meaning of 'occupier' see PARA 261 note 12 ante.

26 Provision may be made for prohibiting or regulating: (1) the possession, sale or offer, exposure or advertisement for sale of any specified substance, or any substance of any specified class, with a view to its use in connection with the production of any food source; (2) the use of any specified substance, or any substance of any specified class, in connection with the production of any food source; and (3) the carrying out of any other activity in connection with, or in a manner likely to affect, the production of any food source: *ibid* Sch 1 para 6A (added by the Food Standards Act 1999 Sch 5 para 23).

27 Provision may be made for securing the inspection of food sources by authorised officers of enforcement authorities for the purpose of ascertaining whether they fail to comply with the requirements of the regulations, or are such that any food derived from them is likely to fail to comply with those requirements: Food Safety Act 1990 Sch 1 para 7(1). There may be provision for enabling such an officer, if it appears to him on such an inspection that any food source falls, or is likely to fall, within Sch 1 para 7(1), to give notice to the person in charge of the food source that, until a time specified in the notice or until the notice is withdrawn no commercial operations are to be carried out with respect to the food source, and the food source either is not to be removed or is not to be removed except to some specified place: Sch 1 para 7(2) (amended by the Food Standards Act 1999 Sch 5 para 24). There may also be provision for enabling such an officer, if on further investigation it appears to him, in the case of any such food source which is a live animal or bird, that there is present in the animal or bird any substance whose presence is prohibited, to cause the animal or bird to be slaughtered: Food Safety Act 1990 Sch 1 para 7(3). For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante.

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(3) FOOD-BORNE DISEASES/290. Guidance on the control of food-borne diseases.

(3) FOOD-BORNE DISEASES

290. Guidance on the control of food-borne diseases.

The Food Standards Agency¹ may issue general guidance to local authorities² or other public authorities on matters connected with the management of outbreaks or suspected outbreaks of food-borne disease³. The Agency must publish any such guidance issued in such manner as it thinks fit⁴. Any authority to whom guidance is issued must have regard to it in carrying out any functions⁵ to which the guidance relates⁶.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Any such guidance must identify the authority or authorities to which it is addressed: Food Standards Act 1999 s 20(2).

3 Ibid s 20(1). 'Food-borne disease' means a disease of humans which is capable of being caused by the consumption of infected or otherwise contaminated food: s 20(5). For the meaning of 'food' see PARA 201 ante; definition applied by s 36(4). Section 20 has effect without prejudice to any other powers of the Agency: s 20(6). As to the general powers of the Agency see PARA 240 et seq ante.

4 Ibid s 20(3).

5 For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by ibid s 36(4).

6 Ibid s 20(4). As to arrangements for sharing information and co-ordinating activities in relation to food-borne diseases see PARA 292 post.

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(3) FOOD-BORNE DISEASES/291. Notification of tests for food-borne disease.

291. Notification of tests for food-borne disease.

Regulations may make provision for requiring the notification of information about tests on samples taken from individuals (whether living or dead) for the presence of organisms of a description specified in the regulations, or any substances¹ produced by or in response to the presence of organisms of a description so specified². A description of organisms may be specified in the regulations only if it appears to the authority making the regulations that those organisms or any substances produced by them are capable of causing disease in humans, and are commonly transmitted to humans through the consumption of food³. The power to make the regulations is exercisable for the purpose of facilitating the carrying out of functions⁴ of the Food Standards Agency⁵ or any other public authority which relate to the protection of public health⁶. The regulations must, as respects each specified description of organisms:

- 111 (1) specify the information to be notified about them and the form and manner in which it is to be notified⁷;
- 112 (2) make provision for identifying the person by whom that information is to be notified⁸; and
- 113 (3) specify the person to whom that information is to be notified⁹.

However, the regulations may not require a person to notify information which is not in his possession, or otherwise available to him, by virtue of his position¹⁰.

The regulations may:

- 114 (a) make provision as to the tests about which information is to be notified¹¹;
- 115 (b) require or permit the person specified under head (3) above to disclose any information to any other person or to publish it¹²;
- 116 (c) restrict the purposes for which any information may be used (whether by the person so specified or by any other person)¹³;
- 117 (d) make provision with a view to ensuring that patient confidentiality is preserved¹⁴;
- 118 (e) create exceptions from any provision of the regulations¹⁵;
- 119 (f) create summary offences¹⁶.

Before making such regulations the authority making them must consult the Agency and such organisations as appear to the authority to be representative of interests likely to be substantially affected by the regulations¹⁷. The power to make such regulations is exercisable as respects tests carried out in England, by the Secretary of State¹⁸; and as respects tests carried out in Wales, by the National Assembly for Wales¹⁹.

¹ For the meaning of 'substance' see PARA 201 note 4 ante; definition applied by the Food Standards Act 1999 s 36(4).

² Ibid s 27(1). At the date at which this volume states the law no such regulations had been made.

³ Ibid s 27(2)(b). For the meaning of 'food' see PARA 201 ante; definition applied by s 36(4).

⁴ For the meaning of 'functions' see PARA 225 note 1 ante; definition applied by s 36(4).

⁵ As to the establishment of the Food Standards Agency see PARA 225 ante.

6 Food Standards Act 1999 s 27(3).

7 Ibid s 27(4)(a).

8 Ibid s 27(4)(b).

9 Ibid s 27(4)(c).

10 Ibid s 27(4).

11 Ibid s 27(5)(a).

12 Ibid s 27(5)(b).

13 Ibid s 27(5)(c).

14 Ibid s 27(5)(d).

15 Ibid s 27(5)(e).

16 Ibid s 27(5)(f). The creation of summary offences is subject to the limitation that no such offence may be punishable with imprisonment or a fine exceeding level 5 on the standard scale: s 27(5)(f). As to the standard scale see PARA 242 note 18 ante.

17 Ibid s 27(6). Any consultation undertaken before 1 April 2000 (ie the date on which s 27(6) came into force) is as effective, for the purposes of s 27(6), as if undertaken after that commencement: s 27(7).

18 Ibid s 27(8)(a). As to the Secretary of State see PARA 224 ante.

19 Ibid s 27(8)(b). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. A statutory instrument made under the Food Standards Act 1999 s 27 is subject to annulment in pursuance of a resolution of either House of Parliament, if it is made by the Secretary of State: see s 37(4).

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

291 Notification of tests for food-borne disease

NOTE 19--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(3) FOOD-BORNE DISEASES/292. Arrangements for sharing information about food-borne zoonoses.

292. Arrangements for sharing information about food-borne zoonoses.

The Food Standards Agency¹ and each of the Ministers of the Crown, the National Assembly for Wales², the Scottish Ministers³ and the Northern Ireland Departments⁴ with responsibility for any matter connected with food-borne zoonoses⁵ must make arrangements with a view to securing (so far as reasonably practicable) that any information relating to food-borne zoonoses in the possession of either of them is furnished or made available to the other⁶. Arrangements may also include arrangements for co-ordinating the activities of the Agency and the authority concerned in relation to matters connected with food-borne zoonoses⁷. Such arrangements are to be kept under review by the Agency and the authority concerned⁸.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 As to the Scottish Ministers see PARA 226 note 3 ante.

4 As to Northern Ireland Departments see the Northern Ireland Act 1998 s 21; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

5 For the meaning of 'food' see PARA 201 ante; definition applied by the Food Standards Act 1999 s 36(4). 'Food-borne zoonosis' means any disease of, or organism carried by, animals which constitutes a risk to the health of humans through the consumption of, or contact with, food: s 28(5). For the meaning of 'animal' see PARA 201 note 3 ante.

6 Ibid s 28(1).

7 Ibid s 28(3).

8 Ibid s 28(4).

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

292 Arrangements for sharing information about food-borne zoonoses

NOTE 2--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(i) Introduction/293. Power to make regulations.

(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS

(i) Introduction

293. Power to make regulations.

The Secretary of State¹ has extensive powers under the Food Safety Act 1990 to make regulations on matters relating to food hygiene and consumer safety². The European Council Directive on the hygiene of foodstuffs requires member states to legislate on various matters relating to hygiene³. The regulations which implement that Directive have general effect in the fields of general food hygiene⁴, temperature control⁵ and imported food⁶.

1 As to the Secretary of State see PARA 224 ante.

2 See the Food Safety Act 1990 s 16 (as amended); and PARA 289 ante.

3 See EC Council Directive 93/43 (OJ L175, 19.7.93, p 1) on the hygiene of foodstuffs (as amended).

4 See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended); and PARA 294 et seq post.

5 See the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended); and PARA 299 et seq post.

6 See the Imported Food Regulations 1997, SI 1997/2537; and PARA 307 et seq post.

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

293 Power to make regulations

NOTE 3--EC Council Directive 93/43 replaced: European Parliament and EC Council Regulation 852/2004 (OJ L139, 30.4.2004, p 1).

NOTES 4, 5--SI 1995/1763, SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). See now the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31 (amended by SI 2006/1534, SI 2007/373); and PARA 293A.

NOTE 6--SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(i) Introduction/293A. Food hygiene.

293A. Food hygiene.

The following provisions apply in relation to England. Except where otherwise provided, the Food Hygiene (Wales) Regulations 2006, SI 2006/31 (amended by SI 2006/1534, SI 2007/373), make corresponding provision in relation to Wales.

See also the Official Feed and Food Controls (England) Regulations 2009, SI 2009/3255; the Official Controls (Animals, Feed and Food) (England) Regulations 2006, SI 2006/3472; and the Official Feed and Food Controls (Wales) Regulations 2009, SI 2009/3376.

1. Presumptions that food is intended for human consumption

Any food commonly used for human consumption, if placed on the market or offered, exposed or kept for placing on the market, is to be presumed, until the contrary is proved, to have been placed on the market or, as the case may be, to have been or be intended for placing on the market, for human consumption¹.

Any food commonly used for human consumption which is found on premises² used for the preparation, storage or placing on the market of that food, and any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or placing on the market of that food, is to be presumed, until the contrary is proved, to be intended for placing on the market, or for manufacturing food for placing on the market, for human consumption³.

Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared is to be presumed, until the contrary is proved, to be intended for such use⁴.

1 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 3(1), (2). The Food Safety Act 1990 s 9 (see PARA 284) applies, with a modification, for the purposes of SI 2006/14: see reg 23.

2 'Premises' includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft: *ibid* reg 2(1).

3 *Ibid* reg 3(1), (3).

4 *Ibid* reg 3(1), (4).

2. Enforcement of food hygiene regulations

In respect of certain food business operators¹, the Food Standards Agency² ('the Agency') or the food authority³ in whose area the food business operator carries out his operations must execute and enforce the hygiene regulations⁴ in so far as the operator concerned is carrying out primary production and certain associated operations⁵, and the food authority in whose area the food business operator carries out his operations must execute and enforce the hygiene regulations in so far as the operator concerned is carrying out his operations which are not executed and enforced by the Agency or the food authority as provided for above⁶.

In respect of certain other food business operators⁷, the Agency must execute and enforce the hygiene regulations in so far as the operator concerned is carrying out operations in relation to

a slaughterhouse⁸, a game handling establishment⁹, or a cutting plant¹⁰, and the Agency or the food authority in whose area the food business operator carries out his operations must execute and enforce the hygiene regulations in so far as the operator concerned is carrying out operations in relation to any other establishment¹¹.

In respect of collection centres and tanneries supplying raw material for the production of gelatine intended for human consumption¹² and collection centres and tanneries supplying raw material for the production of collagen intended for human consumption¹³, the food authority in whose area the collection centre or tannery concerned is situated must execute and enforce the hygiene regulations¹⁴.

1 le any food business operator to whose operations EC Parliament and Council Regulation 852/2004 (see NOTE 4) applies but EC Parliament and Council Regulation 853/2004 (see NOTE 4) does not apply.

2 As to the Food Standards Agency see PARA 225 et seq.

3 'Food authority', in relation to England, has the meaning it bears by virtue of the Food Safety Act 1990 s 5(1) (see PARA 251), except that it does not include the appropriate Treasurer referred to in s 5(1)(c): Food Hygiene (England) Regulations 2006, SI 2006/14, reg 2(1). In relation to Wales, 'food authority' has the meaning it bears by virtue of the 1990 Act s 5(1A) (see PARA 251): Food Hygiene (Wales) Regulations 2006, SI 2006/31 reg 2(1).

4 'The hygiene regulations' means SI 2006/14 (or, in relation to Wales, SI 2006/31) and EC Parliament and Council Regulations 852/2004 (on the hygiene of foodstuffs), 853/2004 (laying down specific hygiene rules for food of animal origin) and 854/2004 (laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption) and EC Commission Regulations 2073/2005 (on microbiological criteria for foodstuffs) and 2075/2005 (laying down specific rules on official controls for trichinella in meat) ('the Community Regulations'): SI 2006/14 reg 2(1), Sch 1 (amended by SI 2007/56). The Agency is the competent authority for the purposes of the Community Regulations, except where it has delegated competences as provided for in those Regulations: SI 2006/14 reg 4.

5 le certain associated operations listed in Regulation 852/2004 Annex I Pt AI para 1.

6 SI 2006/14 reg 5(1).

7 le any food business operator to whose operations Regulations 852/2004 and 853/2004 apply.

8 For these purposes, 'slaughterhouse' means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption, and which is approved or conditionally approved under EC Parliament and Council Regulation 882/2004 art 31(2) or, although lacking the approval or conditional approval required under Regulation 853/2004 art 4(3), was operating on 31 December 2005 as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, or the Poultry Meat, Farmed Game Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540: SI 2006/14 reg 5(6).

9 For these purposes, 'game-handling establishment' means any establishment in which game and game meat obtained after hunting are prepared for placing on the market and which is approved or conditionally approved under Regulation 882/2004 art 31(2) or, although lacking the approval or conditional approval required under Regulation 853/2004 art 4(3), was operating on 31 December 2005 as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148: SI 2006/14 reg 5(6).

10 For these purposes, 'cutting plant' means an establishment which is used for boning and/or cutting up fresh meat for placing on the market, and which is approved or conditionally approved under Regulation 882/2004 art 31(2) or, although lacking the approval or conditional approval required under Regulation 853/2004 art 4(3), was operating on 31 December 2005 as licensed cutting premises under SI 1995/539 or SI 1995/540: SI 2006/14 reg 5(6).

11 Ibid reg 5(2).

12 le pursuant to Regulation 853/2004 Annex III Section XIV Chapter I para 5.

13 le pursuant to Regulation 853/2004 Annex III Section XV Chapter I para 5.

14 SI 2006/14 reg 5(3). Each food authority must execute and enforce SI 2006/14 in its area in relation to the matters regulated by Schs 3-5 (see PARA 293A.13) and, in so far as it applies in relation to raw milk intended for direct human consumption other than raw cow's milk, Sch 6: reg 5(4). The Agency must execute and enforce SI 2006/14 in relation to the matters regulated by Sch 6 in so far as it applies in relation to raw cow's milk intended for direct human consumption: reg 5(5).

3. Hygiene improvement notices

If an authorised officer¹ of an enforcement authority has reasonable grounds for believing that a food business operator is failing to comply with the hygiene regulations, he may by a notice served² on that person (a 'hygiene improvement notice') (1) state his grounds for believing that the food business operator is failing to comply with the hygiene regulations³; (2) specify the matters which constitute the food business operator's failure to comply⁴; (3) specify the measures which, in the officer's opinion, the food business operator must take in order to secure compliance⁵; and (4) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period, not being less than 14 days, as may be specified in the notice⁶.

Any person who fails to comply with a hygiene improvement notice is guilty of an offence⁷.

1 'Authorised officer', in relation to an enforcement authority, means any person, whether or not an officer of the authority, who is authorised by them in writing, either generally or specifically, to act in matters arising under the hygiene regulations: Food Hygiene (England) Regulations 2006, SI 2006/14, reg 2(1). 'Enforcement authority' means the authority which, by virtue of reg 5 (see PARA 293A.2), is responsible for enforcing and executing the hygiene regulations: reg 2(1). For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

2 Any document which is required or authorised under the hygiene regulations to be served on a food business operator may be served (1) by delivering it to that person; (2) in the case of an incorporated company or body, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office; or (3) in the case of any other food business operator, by leaving it or sending it in a prepaid letter addressed to him at his usual or last known residence: *ibid* reg 28(1). Where it is not reasonably practicable to ascertain the name and address of the person on whom such a document should be served, or the premises of the food business operator are unoccupied, the document may be served by addressing it to the food business operator concerned in the capacity of occupier of those premises, naming them, by delivering it to some other person at the premises and, if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises: reg 28(2).

3 *Ibid* reg 6(1)(a).

4 *Ibid* reg 6(1)(b).

5 *Ibid* reg 6(1)(c).

6 *Ibid* reg 6(1)(d).

7 *Ibid* reg 6(2). As to offences see PARA 293A.9.

4. Hygiene prohibition orders

If a food business operator is convicted of an offence¹ and the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled² with respect to the food business concerned, the court must, by a hygiene prohibition order, impose the appropriate prohibition³. If a food business operator is convicted of such an offence and the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case, the court may, by a hygiene prohibition order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order⁴.

As soon as practicable after the making of either such order, the enforcement authority⁵ must serve⁶ a copy of the order on the relevant food business operator and, in the case of a

mandatory hygiene prohibition order⁷, affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as the enforcement authority considers appropriate, and any person who knowingly contravenes such an order is guilty of an offence⁸.

A mandatory hygiene prohibition order ceases to have effect on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business⁹. The enforcement authority must issue such a certificate within three days¹⁰ of their being so satisfied, and on an application by the food business operator for such a certificate, must determine, as soon as is reasonably practicable, and in any event within 14 days, whether or not it is so satisfied, and, if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination¹¹.

A discretionary hygiene prohibition order¹² ceases to have effect on the giving by the court of a direction to that effect¹³. The court must give such a direction if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order, but no such application may be entertained if it is made within six months of the making of the hygiene prohibition order, or within three months of the making by the food business operator of a previous application for such a direction¹⁴.

1 Ie an offence under the Food Hygiene (England) Regulations 2006, SI 2006/14. As to such offences see PARA 293A.9.

2 The health risk condition is fulfilled with respect to any food business if any of (1) the use for the purposes of the business of any process or treatment; (2) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and (3) the state or condition of any premises or equipment used for the purposes of the business, involves risk of injury to health, including any impairment, whether permanent or temporary: *ibid* reg 7(2). For the meaning of 'premises' see PARA 293A.1 NOTE 2.

3 *Ibid* reg 7(1). The appropriate prohibition is (1) in a case falling within NOTE 2 head (1), a prohibition on the use of the process or treatment for the purposes of the business; (2) in a case falling within NOTE 2 head (2), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and (3) in a case falling within NOTE 2 head (3), a prohibition on the use of the premises or equipment for the purposes of any food business: reg 7(3).

Where a magistrates' court makes a hygiene emergency prohibition order under reg 8(2) (see PARA 293A.5 TEXT AND NOTE 6) with respect to any food business, reg 7(1) applies as if the food business operator had been convicted by the court of an offence under SI 2006/14: reg 7(9).

4 *Ibid* reg 7(4). Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to reg 10 (see PARA 293A.9), reg 7(4) applies in relation to that other person as it applies in relation to the food business operator and any reference in reg 7(5) or (8) to the food business operator is to be construed accordingly: reg 7(10).

5 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.

6 As to the service of documents on food business operators see PARA 293A.3 NOTE 2.

7 Ie an order made under SI 2006/14 reg 7(1).

8 *Ibid* reg 7(5).

9 *Ibid* reg 7(6)(a).

10 Any period of less than seven days specified in SI 2006/14 does not include any Saturday, any Sunday, Christmas Day, Good Friday or any bank holiday within the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): see SI 2006/14 reg 2(5).

11 *Ibid* reg 7(7).

12 Ie an order made under *ibid* reg 7(4).

13 Ibid reg 7(6)(b).

14 Ibid reg 7(8).

5. Hygiene emergency prohibition notices and orders

In an authorised officer¹ of an enforcement authority² is satisfied that the health risk condition³ is fulfilled with respect to any food business, he may by a hygiene emergency prohibition notice served⁴ on the relevant food business operator impose the appropriate prohibition⁵. If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court must, by a hygiene emergency prohibition order, impose the appropriate prohibition⁶.

As soon as practicable after the service of a hygiene emergency prohibition notice, an authorised officer of an enforcement authority must affix a copy of the notice in a conspicuous position on such premises⁷ used for the purposes of the food business as he considers appropriate, and any person who knowingly contravenes such a notice is guilty of an offence⁸. As soon as practicable after the making of a hygiene emergency prohibition order, an authorised officer of an enforcement authority must serve a copy of the order on the relevant food business operator and affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as he considers appropriate, and any person who knowingly contravenes such an order is guilty of an offence⁹.

A hygiene emergency prohibition notice ceases to have effect (1) if no application for a hygiene emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period; or (2) if such an application is so made, on the determination or abandonment of the application¹⁰. A hygiene emergency prohibition notice or a hygiene emergency prohibition order ceases to have effect on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business¹¹. The enforcement authority must issue such a certificate within three days of their being so satisfied, and on an application by the food business operator for such a certificate, must determine, as soon as is reasonably practicable, and in any event within 14 days, whether or not it is so satisfied, and, if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination¹².

Where a hygiene emergency prohibition notice is served on a food business operator, the enforcement authority must compensate him in respect of any loss suffered by reason of his complying with the notice unless (a) an application for a hygiene emergency prohibition order is made within the period of three days beginning with the service of the notice; and (b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the food business at the time when the notice was served, and any disputed question as to the right to or the amount of any such compensation is to be determined by arbitration¹³.

1 For the meaning of 'authorised officer' see PARA 293A.3 NOTE 1.

2 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.

3 The health risk condition which applies for the purposes of the Food Hygiene (England) Regulations 2006, SI 2006/14, reg 7 (see PARA 293A.4), also applies for the purposes of reg 8 but as if the reference in reg 7(2) (see PARA 293A.4 NOTE 2) to risk of injury to health were a reference to imminent risk of injury: reg 8(4).

4 As to the service of documents on food business operators see PARA 293A.3 NOTE 2.

5 SI 2006/14 reg 8(1). The appropriate prohibition which applies for the purposes of reg 7(3) (see PARA 293A.4 NOTE 3) applies for the purposes of reg 8 as it does for the purposes of reg 7: reg 8(4).

6 Ibid reg 8(2). Such an officer may not apply for a hygiene emergency prohibition order unless, at least one day before the date of the application, he has served notice on the relevant food business operator of his intention to apply for the order: reg 8(3). As to periods of less than seven days specified in SI 2006/14 see PARA 293A.4 NOTE 10.

7 For the meaning of 'premises' see PARA 293A.1 NOTE 2.

8 SI 2006/14 reg 8(5). As to offences see PARA 293A.9.

9 Ibid reg 8(6).

10 Ibid reg 8(7).

11 Ibid reg 8(8).

12 Ibid reg 8(9).

13 Ibid reg 8(10).

6. Remedial action notices and detention notices

Where it appears to an authorised officer¹ of an enforcement authority² that, in respect of an establishment subject to approval³, any of the requirements of the hygiene regulations⁴ is being breached, or inspection under the hygiene regulations is being hampered, he may, by a notice in writing served⁵ on the relevant food business operator or his duly authorised representative (a 'remedial action notice'), prohibit the use of any equipment or any part of the establishment specified in the notice, impose conditions on or prohibit the carrying out of any process, or require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely⁶. A remedial action notice must be served as soon as practicable and must state why it is being served⁷. If such a notice is being served because of a breach of a requirement of the hygiene regulations, it must specify the breach and the action needed to remedy it⁸. An authorised officer of the enforcement authority whose authorised officer served the original remedial action notice must, as soon as he is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative⁹.

An authorised officer of an enforcement authority may, at an establishment subject to approval¹⁰, by a notice in writing served on the relevant food business operator or his duly authorised representative (a 'detention notice'), require the detention of any animal or food for the purpose of examination, including the taking of samples¹¹. An authorised officer of the enforcement authority whose officer served the original detention notice must, as soon as he is satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative¹².

Any person who fails to comply with a remedial action notice or a detention notice is guilty of an offence¹³.

1 For the meaning of 'authorised officer' see PARA 293A.3 NOTE 1.

2 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.

3 ie subject to approval under EC Parliament and Council Regulation 853/2004 art 4(2).

4 For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

5 As to the service of documents on food business operators see PARA 293A.3 NOTE 2.

6 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 9(1).

7 Ibid reg 9(2).

- 8 Ibid reg 9(3).
- 9 Ibid reg 9(4).
- 10 It is subject to approval under EC Parliament and Council Regulation 853/2004 art 4(2).
- 11 SI 2006/14 reg 9(5).
- 12 Ibid reg 9(6).
- 13 Ibid reg 9(7). As to offences see PARA 293A.9.

7. Procurement and analysis of samples

An authorised officer¹ of an enforcement authority² may (1) purchase a sample of any food, or any substances capable of being used in the preparation of food³; (2) take a sample of any food, or any such substance, which appears to him to be intended for placing on the market or to have been placed on the market for human consumption or is found by him on or in any premises⁴ which he is authorised to enter⁵; (3) take a sample from any food source, or a sample of any contact material, which is found by him on or in any such premises⁶; and (4) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings⁷.

An authorised officer of an enforcement authority who has procured such a sample must, if he considers that the sample should be analysed, submit it to be analysed by the public analyst for the area⁸ in which the sample was procured or by the public analyst for the area which consists of or includes the area of the authority, and, if he considers that the sample should be examined, submit it to be examined by a food examiner⁹. A person other than such an officer who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it to be analysed by the public analyst for the area in which the purchase was made, or to be examined by a food examiner¹⁰.

A food analyst or examiner must analyse or examine any sample submitted or sent to him as soon as practicable but may, except where he is the public analyst for the area in question and the sample is submitted to him for analysis by an authorised officer of an enforcement authority, demand in advance the payment of such reasonable fee as he may require¹¹. If, in any case where a sample is proposed to be or is submitted for analysis or examination, the food analyst or examiner determines that he is for any reason unable to perform the analysis or examination, the sample must be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine¹².

Any food analyst or examiner who has analysed or examined a sample must give to the person who submitted it a certificate in the prescribed form¹³ specifying the result of the analysis or examination¹⁴. Any such certificate must be signed by the food analyst or examiner, but the analysis or examination may be made by a person acting under his direction¹⁵. In any proceedings under the food hygiene regulations¹⁶, the production by one of the parties of a document purporting to be a certificate given by a food analyst or examiner, or of a document supplied to that party by the other party as being a copy of such a certificate, is sufficient evidence of the facts stated in it unless, in the case of a document purporting to be a certificate, the other party requires the food analyst or examiner to be called as a witness¹⁷.

- 1 For the meaning of 'authorised officer' see PARA 293A.3 NOTE 1.
- 2 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.
- 3 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 12(a).
- 4 For the meaning of 'premises' see PARA 293A.1 NOTE 2.

5 le authorised by or under SI 2006/14 reg 14 (see PARA 293A.8): reg 12(b).

6 Ibid reg 12(c).

7 le proceedings under SI 2006/14: reg 12(d). The Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463 (see PARA 264 et seq), apply in relation to a sample procured by an authorised officer of a food authority under SI 2006/14 reg 12 as if it were a sample procured by an authorised officer under the Food Safety Act 1990 s 29 (see PARA 262); SI 2006/14 reg 13(10). For the meaning of 'food authority' see PARA 293A.2 NOTE 3.

8 If, in any case where a sample is proposed to be submitted for analysis, the office of public analyst for the area in question is vacant, the sample must be submitted to the public analyst for some other area: *ibid* reg 13(3). Where two or more public analysts are appointed for any area, any reference to the public analyst for that area is to be construed as a reference to either or any of them: reg 13(9).

9 Ibid reg 13(1).

10 Ibid reg 13(2).

11 Ibid reg 13(5).

12 Ibid reg 13(4).

13 le in the form set out in SI 1990/2463 Sch 3: SI 2006/14 reg 13(11).

14 Ibid reg 13(6).

15 Ibid reg 13(7).

16 le under SI 2006/14.

17 Ibid reg 13(8).

8. Powers of officers

An authorised officer of a food authority¹ has a right at all reasonable hours on producing, if required, some duly authenticated document showing his authority, to (1) enter any premises² within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the hygiene regulations³; (2) enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and (3) enter any premises for the purpose of the performance by the authority of its functions under the hygiene regulations, but admission to any premises used only as a private dwelling house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier⁴.

An authorised officer of the Food Standards Agency⁵ ('the Agency') has a right at all reasonable hours on producing, if required, some duly authenticated document showing his authority, to enter any premises for the purpose of (a) ascertaining whether there is or has been on the premises any contravention of the provisions of the hygiene regulations; (b) ascertaining whether there is on the premises any evidence of any such contravention; and (c) the performance by the Agency of its functions under the hygiene regulations⁶.

If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto premises for any of the above purposes and either (i) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or (ii) that an application for admission, or the giving of such a notice, would defeat the object of that entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent, the justice may by warrant⁷ signed by him authorise the authorised officer to enter the premises, if need be by reasonable force⁸.

An authorised officer entering any premises by virtue of these provisions, or of a warrant issued under them, may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as he found them⁹. Such an officer may also inspect any records relating to a food business in whatever form they are held and, where any such records are stored in any electronic form, may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records, and may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require¹⁰.

Any person who (A) enters any premises by virtue of these provisions, or of a warrant issued under them, and discloses to any person any information obtained by him on the premises with regard to any trade secret, with such a disclosure not being made in the performance of his duty¹¹; (B) intentionally obstructs any person acting in the execution of the hygiene regulations¹²; (C) without reasonable cause, fails to give to any person acting in the execution of the hygiene regulations any assistance or information which that person may reasonably require of him for the performance of his functions under the hygiene regulations¹³; or (D) in purported compliance with any such requirement, furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular, is guilty of an offence¹⁴.

An officer of an enforcement authority¹⁵ is not personally liable in respect of any act done by him in the execution or purported execution of the hygiene regulations and within the scope of his employment if he has done that act in the honest belief that his duty under the hygiene regulations required or entitled him to do it¹⁶. Where an action has been brought against an officer of an enforcement authority in respect of an act done by him in the execution or purported execution of the hygiene regulations but outside the scope of his employment, the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay, or any costs which he may have incurred, if it is satisfied that he honestly believed that the act complained of was within the scope of his employment¹⁷. For these purposes, a public analyst¹⁸ appointed by a food authority is treated as being an officer of the authority, whether or not his appointment is a whole-time one¹⁹.

1 For the meaning of 'food authority' see PARA 293A.2 NOTE 3.

2 For the meaning of 'premises' see PARA 293A.1 NOTE 2.

3 For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

4 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 14(1). Nothing in reg 14 authorises any person, except with the permission of the local authority under the Animal Health Act 1981 (see ANIMALS vol 2 (2008) PARA 1096), to enter any premises on which an animal or bird affected with any disease to which the 1981 Act applies is kept and which is situated in a place declared under the 1981 Act to be infected with such a disease: SI 2006/14 reg 14(9).

5 As to the Food Standards Agency see PARA 225 et seq.

6 SI 2006/14 reg 14(2).

7 Any such warrant continues in force for a period of one month: *ibid* reg 14(4).

8 *Ibid* reg 14(3).

9 *Ibid* reg 14(5).

10 *Ibid* reg 14(6). Any officer exercising any power conferred by reg 14(6) may seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of SI 2006/14 and, where the records are stored in any electronic form, may require the records to be produced in a form in which they may be taken away: reg 14(7).

- 11 Ibid reg 14(8).
- 12 Ibid reg 15(1)(a).
- 13 Ibid reg 15(1)(b). Nothing in reg 15(1)(b) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him: reg 15(3).
- 14 Ibid reg 15(2). As to offences see PARA 293A.9.
- 15 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.
- 16 SI 2006/14 reg 25(1), which is not to be construed as relieving any enforcement authority of any liability in respect of the acts of their officers: reg 25(2).
- 17 Ibid reg 25(3).
- 18 As to public analysts see PARA 293A.7.
- 19 SI 2006/14 reg 25(4).

9. Offences, penalties and appeals

A person guilty of an offence under the food hygiene regulations¹ is liable, on summary conviction, to a fine not exceeding the statutory maximum², or on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both³. A person guilty of an obstruction offence⁴ is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁵ or to imprisonment for a term not exceeding three months or to both⁶. A person who contravenes or fails to comply with any of the specified Community provisions⁷ is guilty of an offence⁸.

Where an offence under the food hygiene regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director⁹, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly¹⁰. Where the commission by any person of such an offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be convicted of the offence whether or not proceedings are taken against the first-mentioned person¹¹.

In any proceedings for such an offence, it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control¹². If in any case the defence so provided involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused may not, without leave of the court, be entitled to rely on that defence unless, at least seven clear days before the hearing and, where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession¹³.

A person who is aggrieved by a decision of an authorised officer¹⁴ of an enforcement authority¹⁵ to serve a hygiene improvement notice¹⁶, a decision of an enforcement authority to refuse to issue a certificate¹⁷, or a decision of an authorised officer of an enforcement authority to serve a remedial action notice¹⁸ may appeal to a magistrates' court¹⁹. The period within which such an appeal may be brought is one month from the date on which notice of the decision was served on the person desiring to appeal or, in the case of an appeal against a decision to issue a hygiene improvement notice, that period or, if shorter, the period specified²⁰ in the hygiene improvement notice²¹. A person who is aggrieved by the dismissal by a magistrates' court of

such an appeal or any decision of such a court to make a hygiene prohibition order²² or a hygiene emergency prohibition order²³ may appeal to the Crown Court²⁴.

On an appeal against a hygiene improvement notice or a remedial action notice, the court may cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit²⁵. Where any period specified in a hygiene improvement notice²⁶ would otherwise include any day on which an appeal against that notice is pending, that day is to be excluded from that period²⁷. Any appeal is to be regarded as pending until it is finally disposed of, withdrawn or struck out for want of prosecution²⁸.

1 Ie under the Food Hygiene (England) Regulations 2006, SI 2006/14.

2 As to the statutory maximum see PARA 261 NOTE 23.

3 SI 2006/14 reg 17(2). No prosecution for an offence punishable under reg 17(2) may be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier: reg 16.

4 Ie an offence under *ibid* reg 15 (see PARA 293A.8).

5 As to the standard scale see PARA 242 NOTE 18.

6 SI 2006/14 reg 17(3).

7 'Specified Community provision' means any provision of the Community Regulations which is specified in SI 2006/14 Sch 2 col 1 and whose subject matter is described in Sch 2 col 2: reg 2(1). For the meaning of 'the Community Regulations' see PARA 293A.2 NOTE 4. See *Kothari v Harrow LBC* [2009] EWHC 1354 (Admin), [2009] All ER (D) 160 (Jun), DC.

8 SI 2006/14 reg 17(1). A person is to be considered not to have contravened or failed to comply with EC Parliament and Council Regulation 852/2004, as read with Annex II Chapter IV para 4, provided the requirements of SI 2006/14 Sch 3 (see PARA 293A.13) are complied with: reg 17(4).

9 'Director', in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: *ibid* reg 18(2).

10 *Ibid* reg 18(1).

11 *Ibid* reg 10.

12 *Ibid* reg 11(1).

13 *Ibid* reg 11(2).

14 For the meaning of 'authorised officer' see PARA 293A.3 NOTE 1.

15 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.

16 As to hygiene improvement notices see PARA 293A.3.

17 Ie a certificate under SI 2006/14 reg 7(6) (see PARA 293A.4 TEXT AND NOTE 9) or reg 8(8) (see PARA 293A.5 TEXT AND NOTE 11).

18 As to remedial action notices see PARA 293A.6.

19 SI 2006/14 reg 20(1). The procedure on such an appeal is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings: SI 2006/14 reg 20(2).

20 Ie specified pursuant to *ibid* reg 6(1)(d) (see PARA 293A.3 TEXT AND NOTE 6).

21 *Ibid* reg 20(1).

22 As to hygiene prohibition orders see PARA 293A.4.

- 23 As to hygiene emergency prohibition orders see PARA 293A.5.
- 24 SI 2006/14 reg 21.
- 25 Ibid reg 22(1).
- 26 Ie specified pursuant to ibid reg 6(1)(d) (see PARA 293A.3 TEXT AND NOTE 6).
- 27 SI 2006/14 reg 22(2).
- 28 Ibid reg 22(3).

10. Power to issue codes of recommended practice

For the guidance of food authorities¹, the Secretary of State² may issue codes of recommended practice as regards the execution and enforcement of the hygiene regulations³ and, in relation to England, any such code must be laid before Parliament after being issued⁴. The Agency may, after consulting the Secretary of State, give a food authority a direction requiring it to take any specified steps in order to comply with any such code⁵. Such a direction is enforceable by mandatory order on the application of the Agency⁶, which must consult the Secretary of State before making such an application⁷.

In exercise of the functions conferred on it by or under the hygiene regulations, every food authority must have regard to any relevant provision of any code of recommended practice and must comply with any Agency direction which requires it to take any specified steps in order to comply with such a code⁸.

1 For the meaning of 'food authority' see PARA 293A.2 NOTE 3.

2 Powers exercised by the Secretary of State in England are exercised in Wales by the National Assembly for Wales: see the Food Hygiene (Wales) Regulations 2006, SI 2006/31, reg 24.

3 For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

4 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 24(1). Before issuing any such code, the Secretary of State must have regard to any relevant advice given by the Food Standards Agency ('the Agency'): reg 24(6). As to the Food Standards Agency see PARA 225 et seq.

5 Ibid reg 24(2).

6 Ibid reg 24(4).

7 Ibid reg 24(5).

8 Ibid reg 24(3).

11. Revocation and suspension of designations and appointments

The Food Standards Agency¹ ('the Agency') may at any time revoke or suspend the appointment of an official veterinarian, the designation of an approved veterinarian, or the appointment of an official auxiliary if it appears to the Agency that the person in question is unfit to perform any of the functions of the post under the hygiene regulations². Where the Agency revokes or suspends such an appointment or designation, it must, as soon as practicable, give to the person whose designation or appointment has been revoked or suspended a notice in writing of the reasons for the revocation or suspension and must afford him an opportunity of making representations in writing to the Agency with regard to the revocation or suspension, or of being heard by a person nominated for the purpose by the Agency³. Such a notice must inform the person to whom it is given (1) of his right to make representations in writing; (2) of the manner in which and the time, not being less than 21 days

from the giving of the notice, within which such representations may be made; (3) of his right to be heard; and (4) of the manner in which and the time, not being less than 21 days from the giving of the notice, within which he may apply for an opportunity to be heard⁴.

Where a person requests the opportunity to be heard, (a) the Agency must nominate a person from an established list to determine the matter⁵; (b) the person so nominated must serve a notice on the Agency and on the person requesting the opportunity to be heard informing them of the time, not being less than 21 days from the giving of the notice, of the hearing⁶; and (c) the person so nominated must, within 21 days of the hearing, notify the Agency and the person requesting the opportunity to be heard of the nominated person's decision⁷.

1 As to the Food Standards Agency see PARA 225 et seq.

2 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 26(1). For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

3 Ibid reg 26(2).

4 Ibid reg 26(3). In the event of the person whose designation or appointment has been revoked or suspended making any representations, whether orally or in writing, under reg 26(3), the Agency must reconsider whether that person is unfit to perform any of the functions of the post held by him under the hygiene regulations and must, as soon as practicable, reconsider its decision to revoke or suspend the designation or appointment in the light of those representations: reg 26(4).

5 Ibid reg 26(5)(a). The Agency must establish and maintain a list of people who may be nominated for the purposes of reg 26 and must consult those organisations appearing to it to represent official veterinarians, approved veterinarians and official auxiliaries before including any person on the list: reg 26(6).

6 Ibid reg 26(5)(b).

7 Ibid reg 26(5)(c).

12. Food not produced, processed or distributed in accordance with the hygiene regulations

On an inspection of any food, an authorised officer¹ of an enforcement authority² may certify that it has not been produced, processed or distributed in compliance with the hygiene regulations³. Where any food is so certified it must be treated for specified purposes⁴ as failing to comply with food safety requirements⁵. Where any food so certified is part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment is to be treated as having been so certified until it is proved that it has been produced, processed or distributed in compliance with the hygiene regulations⁶.

1 For the meaning of 'authorised officer' see PARA 293A.3 NOTE 1.

2 For the meaning of 'enforcement authority' see PARA 293A.3 NOTE 1.

3 Food Hygiene (England) Regulations 2006, SI 2006/14, reg 27(1). For the meaning of 'the hygiene regulations' see PARA 293A.2 NOTE 4.

4 I.e. for the purposes of the Food Safety Act 1990 s 9 (see PARA 284).

5 SI 2006/14 reg 27(2).

6 Ibid reg 27(3).

13. Miscellaneous provisions

Provision has been made in relation to (1) bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar¹; (2) temperature control requirements²; (3) the direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm³; and (4) restrictions on the sale of raw milk intended for direct human consumption⁴.

1 See the Food Hygiene (England) Regulations 2006, SI 2006/14, reg 29, Sch 3.

2 See *ibid* reg 30, Sch 4.

3 See *ibid* reg 31, Sch 5.

4 See *ibid* reg 32, Sch 6; Food Hygiene (Wales) Regulations 2006, SI 2006/31, reg 32(1), Sch 6.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Hygiene

294. Application of rules relating to general food hygiene.

The Food Safety (General Food Hygiene) Regulations 1995¹ provide general rules in relation to food hygiene² which apply with the exception of³: (1) primary production⁴; and (2) persons carrying on any activity which is regulated by or under specific regulations⁵, but only with respect to the carrying on of that activity⁶.

¹ See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended): see PARAS 295-298 post.

The Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 282 ante), s 3 (presumptions that food is intended for human consumption) (see PARA 282 ante), s 20 (offences due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (documentary evidence) (see PARA 269 post), s 33 (obstruction of officers) (see PARA 271 post), s 34 (time limit for prosecutions) (see PARA 459 post), s 36 subject to certain modifications (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 post), apply for the purposes of the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended), as they apply for the purposes of the Food Safety Act 1990 s 8 (selling food not complying with food safety requirements) (see PARA 283 ante), s 14 (selling food not of the nature or substance or quality demanded) (see PARA 360 post) and s 15 (falsely describing or presenting food) (see PARA 372 post), and unless the context otherwise requires, a reference in them to the Food Safety Act 1990 is to be construed, for the purposes of the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended), as a reference to those regulations: see reg 7. See also PARAS 463, 465-467 post.

² See PARA 294 et seq post.

³ See *ibid* reg 3(1).

⁴ See *ibid* reg 3(1)(a). 'Primary production' includes harvesting, slaughtering and milking: reg 2(1).

⁵ As to the specific regulations see PARA 326 post.

⁶ See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 3(1)(b); and PARA 326 post. Notwithstanding reg 3(1)(b), the provisions of Sch 1 Ch VII para 1 (adequate supply of potable water) (see PARA 295 post) and of reg 4(2)(d) (see PARA 294 post) in so far as it relates to Sch 1 Ch VII para 1 apply to a proprietor of a food business, unless: (1) he is carrying on an activity which relates to a particular stage in the production of a product and a provision in any of the regulations listed in reg 3(2) (as amended) imposes a further or alternative requirement in relation to the supply and use of potable water in connection with that stage in the production of that product; or (2) he is carrying out commercial operations on board a fishing vessel: reg 3(3). Notwithstanding reg 3(1)(b), the provisions of Sch 1 Ch X (training of food handlers in food hygiene matters) (see PARA 294 post) and of reg 4(2)(d) in so far as it relates to Sch 1 Ch X apply to a proprietor of a food business, unless a provision in any of the regulations listed in reg 3(2) (as amended) imposes a further or alternative requirement in relation to the instruction or training of food handlers: reg 3(4).

However, regs 4 and 5 (see PARAS 295-297 post) apply to a person carrying on any of the following activities in England and Wales, that is to say the handling in or sale from any catering establishment or shop premises of any heat-treated cream or of any ice-cream: reg 3(5) (added by SI 1996/1699). For the meaning of 'catering establishment' see PARA 345 note 21 post; definition applied by the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 3(5) (as so added). For the meaning of 'cream' see PARA 345 note 24 post; definition applied by reg 3(5) (as so added). For the meaning of 'handling' see PARA 345 note 8 post; definition applied by reg 3(5) (as so added). For the meaning of 'heat-treated' see PARA 346 note 3 post; definition applied by reg 3(5) (as so added). For the meaning of 'ice-cream' see PARA 346 note 18 post; definition applied by reg 3(5) (as so added). For the meaning of 'shop premises' see PARA 345 note 22 post; definition applied by reg 3(5) (as so added).

'Potable water' means water which at the time of supply is or was not likely in a given case to affect adversely the wholesomeness of a particular foodstuff in its finished form, and which is or was either: (1) of the quality demanded in order for it to be regarded as wholesome for the purposes of the Water Industry Act 1991 Pt III Ch III (ss 67-86A) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 373 et seq); or (2) not of that quality, but the water is or was derived from: (a) a public supply in England or Wales and the Secretary of State is not required to make or confirm (with or without modifications) an enforcement order under the Water Industry Act 1991 s 18 (see WATER AND WATERWAYS vol 100 (2009) PARA 163) in relation to the company supplying that water; or (b) a private supply in relation to which a private supply notice has been served or the option of a private supply notice has been considered and rejected by the local authority with remedial powers in relation to that private supply, unless since the time of supply the quality of the water has deteriorated in a way which, in a given case, has adversely affected or is likely to affect adversely the wholesomeness of a particular foodstuff in its finished form: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1). As to the Secretary of State see PARA 224 ante.

'Water' includes water in any form but does not include water which is: (i) natural mineral water or drinking water within the meaning of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540 (see PARA 451 post); or (ii) a medicinal product within the meaning of the Medicines Act 1968 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 7) or is a product in respect of which any provision of that Act has effect in relation to it as if it were a medicinal product within the meaning of that Act: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1) (amended by SI 1990/1540).

'Wholesomeness' means, in relation to food, its fitness for human consumption so far as hygiene is concerned: reg 2(1). For the meaning of 'food' see PARA 201 ante. For the meaning of 'human consumption' see PARA 201 note 3 ante.

'Public supply' means a supply of water which is not a private supply: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1). For these purposes 'private supply' has, in England and Wales, the same meaning as in the Water Industry Act 1991 s 93(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 373): Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1). 'Private supply notice' means, in England and Wales, a notice under the Water Industry Act 1991 s 80 (see WATER AND WATERWAYS vol 100 (2009) PARA 404): Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1).

UPDATE

282-294 Rendering food injurious to health ... Application of rules relating to general food hygiene

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

294-298 Hygiene

SI 1995/1763 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(ii) Hygiene/295. Obligations upon proprietors of food businesses.

295. Obligations upon proprietors of food businesses.

A proprietor¹ of a food business² must ensure that the preparation³, processing, manufacturing, packaging, storing, transportation, distribution, handling and offering for sale⁴ or supply of food⁵ are carried out in a hygienic way⁶. A proprietor of a food business must also ensure that the following requirements are complied with⁷:

- 120 (1) the general requirements as respects any food premises⁸ used for the purposes of that business⁹;
- 121 (2) the specific requirements as respects any room where food is prepared, treated or processed in the course of the activities of that business, other than dining areas and premises¹⁰ included in head (3) below¹¹;
- 122 (3) the requirements for moveable or temporary premises (such as marquees, market stalls and mobile sales vehicles), premises used primarily as a private dwelling house, premises used occasionally for catering purposes and vending machines¹²; and
- 123 (4) the requirements for transport¹³, equipment¹⁴, food waste¹⁵, water supply¹⁶, personal hygiene¹⁷, provisions applicable to foodstuffs¹⁸, and training¹⁹, as respects that business.

In addition, the proprietor of a food business must identify any step in the activities of the food business which is critical to ensuring food safety and ensure that adequate safety procedures are identified, implemented, maintained and reviewed on the basis of the following principles²⁰:

- 124 (a) analysis of the potential food hazards in a food business operation²¹;
- 125 (b) identification of the points in those operations where food hazards may occur²²;
- 126 (c) deciding which of the points identified are critical to ensuring food safety²³;
- 127 (d) identification and implementation of effective control and monitoring procedures at those critical points²⁴; and
- 128 (e) review of the analysis of food hazards, the critical points and the control and monitoring procedures periodically, and whenever the food business's operations change²⁵.

If any person contravenes the obligations upon proprietors of food businesses²⁶ he is guilty of an offence²⁷.

1 For the meaning of 'proprietor' see PARA 285 note 2 ante.

2 'Food business' means any undertaking, whether carried on for profit or not and whether public or private, carrying out any or all of the following operations, namely, preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling or offering for sale or supply, of food: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1).

3 For the meaning of 'preparation' see PARA 201 note 3 ante.

4 For the meaning of 'sale' see PARA 262 note 5 ante.

5 For the meaning of 'food' see PARA 201 ante.

6 Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 4(1). 'Hygiene' means all measures necessary to ensure the safety and wholesomeness of food during preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling and offering for sale or supply to the consumer; and 'hygienic' is to be construed accordingly: reg 2(1). For the meaning of 'preparation' see PARA 201 note 3 ante. For the meaning of 'sale' see PARA 262 note 5 ante; applied by reg 7(a).

7 See *ibid* reg 4(2).

8 For the meaning of 'food premises' see PARA 241 note 11 ante.

9 See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 4(2)(a), Sch 1 Ch I.

10 For the meaning of 'premises' see PARA 204 note 16 ante.

11 See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 4(2)(b), Sch 1 Ch II.

12 See *ibid* reg 4(2)(c), Sch 1 Ch III.

13 See *ibid* reg 4(2)(d), Sch 1 Ch IV.

14 See *ibid* Sch 1 Ch V.

15 See *ibid* Sch 1 Ch VI.

16 See *ibid* Sch 1 Ch VII. For the meaning of 'water' see PARA 294 note 6 ante.

17 See *ibid* Sch 1 Ch VIII.

18 See *ibid* Sch 1 Ch IX.

19 See *ibid* Sch 1 Ch X.

20 *Ibid* reg 4(3).

21 *Ibid* reg 4(3)(a).

22 *Ibid* reg 4(3)(b).

23 *Ibid* reg 4(3)(c). In determining whether any matter involves a risk to food safety or wholesomeness, regard must be had to the nature of the food, the manner in which it is handled and packed, any process to which the food is subjected before supply to the consumer, and the conditions under which it is displayed or stored: reg 2(2). For the meaning of 'wholesomeness' see PARA 294 note 6 ante.

24 *Ibid* reg 4(3)(d).

25 *Ibid* reg 4(3)(e).

26 *Ibid* reg 4 (including any provision of Sch 1 (as amended) (see the text to notes 9-19 *supra*)).

27 *Ibid* reg 6(1). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 6(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

294-298 Hygiene

SI 1995/1763 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

295 Obligations upon proprietors of food businesses

NOTE 18--See also *Asda Stores Ltd v Wandsworth LBC* [2007] All ER (D) 06 (Feb).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(ii) Hygiene/296. Licences for butchers' shops.

296. Licences for butchers' shops.

No person may use premises for the purposes of a butcher's shop¹ except in accordance with a licence² which is in force in respect of those premises³. An applicant for a licence must submit his application to the appropriate food authority⁴ not less than 28 days before the date on which a licence is required⁵. The appropriate food authority must then, within 28 days of the receipt of such an application determine it, and give notice of its determination to the applicant⁶.

The appropriate food authority must issue a licence in respect of a butcher's shop if:

- 129 (1) the applicant has submitted to it an application which sets out his address and either specifies the location of his shop or, in the case of movable premises, other information which identifies the premises to which the application relates⁷;
- 130 (2) it is satisfied that the specified conditions⁸ are met on the basis of the information submitted by the applicant and any other information relating to the food business which it has acquired from an inspection of the shop or otherwise⁹.

The appropriate food authority must impose a charge on any person to whom it issues a licence¹⁰.

The conditions that must be fulfilled for the grant of a licence are that:

- 131 (a) the food business in the butcher's shop complies with the requirements of the regulations relating to general food hygiene¹¹ and the regulations relating to temperature control¹²;
- 132 (b) all food handlers in the shop are trained in food hygiene to the standards required to enable them to perform their duties with a view to ensuring that all the food in the shop complies with those requirements¹³;
- 133 (c) at least one person working in the shop is trained in food hygiene to enable him to supervise the activities of the food business with a view to ensuring that all of the food in the shop complies with those requirements and that the procedures critical to ensuring food safety by Hazard Analysis and Critical Control Points systems (HACCP procedures)¹⁴ which apply are followed¹⁵; and
- 134 (d) HACCP procedures are in place¹⁶.

The applicant or a proprietor or manager of the butcher's shop must make available records of the HACCP procedures which apply in the shop, and the training which persons have undertaken to enable them to carry out operations in the shop, when requested to do so by the appropriate food authority¹⁷.

Where premises are not being used as a butcher's shop when the application relating to them is submitted to the appropriate food authority, the applicant must provide information to that authority on the commercial operations, training and HACCP procedures which he proposes to introduce and the authority must take that information into account when it determines the application¹⁸.

A licence remains in force for the period of one year commencing on the day on which it is issued¹⁹.

Each licence must contain the condition that the person who holds it must give notice to the appropriate food authority of any material change which may reduce the safety of food sold or supplied from the butcher's shop to which the licence relates, including any material change to the layout or ownership of the premises or the operation of the food business²⁰.

Where any of the specified conditions²¹ cease to be satisfied in respect of a butcher's shop, the appropriate food authority may suspend or revoke any licence which it has issued in respect of that shop and give notice of its decision to the proprietor of the shop²².

If any person uses premises as a butcher's shop otherwise than in accordance with these provisions, he is guilty of an offence²³.

1 'Butcher's shop' means the premises of a food business, other than catering premises, in or from which: (1) commercial operations are carried out in relation to unwrapped raw meat; and (2) raw meat and ready to eat food are both placed on the market for sale or supply: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 4A, Sch 1A para 1 (reg 4A, Sch 1A added by SI 2000/930 with effect from 1 November 2000). Before 1 November 2000, persons may apply for licences by submitting applications which comply with the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A (as so added): see the Food Safety (General Food Hygiene) (Butchers' Shops) Regulations 2000, SI 2000/930, reg 5.

'Catering premises' means premises, or parts of premises, which are used solely for the purposes of a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business: (a) food is prepared for delivery to the ultimate consumer for consumption; and (b) no food is prepared or supplied with a view to it being subject to further treatment or processing after it has left the premises: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 1 (as so added). 'Unwrapped' means neither wrapped so as to prevent the passage of micro-organisms nor enclosed in a receptacle which prevents the passage of such organisms: Sch 1A para 1 (as so added). 'Meat' means fresh meat within the meaning of the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 2(1) (see PARA 478 post), or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 2(1) (see PARA 530 post), and wild game meat as defined in the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 2(1) (see PARA 331 post): Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 1 (as so added). 'Raw meat' means meat which is not ready to eat food: Sch 1A para 1 (as so added). 'Ready to eat food' means any food for consumption without further treatment or processing: Sch 1A para 1 (as so added).

2 le a licence issued under *ibid* Sch 1A (as added: see note 1 *supra*).

3 *Ibid* Sch 1A para 2(a) (as added: see note 1 *supra*). There is also an exception where a food authority has refused to issue a licence in respect of an application made in specified circumstances, in which case the premises to which the application relates may continue to be used as a butchers' shop until the time specified in the Food Safety Act 1990 s 37(5) (see PARA 469 post) for bringing an appeal under that provision has expired or, if an appeal under that provision is brought, until the appeal is finally disposed of or abandoned: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A paras 2(b), 9(1) (as so added). The circumstances specified for the purposes of Sch 1A para 9(1) (as added) are that on the date on which the application was made the premises to which it relates are used as a butcher's shop and either: (1) the application is made before 1 November 2000; or (2) on the date on which the application is made, a licence is in force in respect of the premises to which the application relates: Sch 1A para 9(2) (as so added).

4 'Appropriate food authority' in relation to a butcher's shop, or an application or licence relating to a butcher's shop, means the food authority for the area in which the shop is situated (or in the case of moveable premises, ordinarily kept) or the food authority which has registered the shop under the Food Premises (Registration) Regulations 1991, SI 1991/2825, reg 2 (see PARA 273 ante): Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 1 (as added: see note 1 *supra*).

5 *Ibid* Sch 1A para 3(1) (as added: see note 1 *supra*).

6 *Ibid* Sch 1A para 3(2) (as added: see note 1 *supra*). A notice given under Sch 1A para 3(2) (as added) of the refusal of an application must specify any condition in Sch 1A para 5 (as added) (see the text and notes 11-18 *infra*) which is not satisfied and must contain particulars of the right of appeal which is conferred by the Food Safety Act 1990 s 37(1)(c) (see PARA 469 post): Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 3(3) (as so added).

7 *Ibid* Sch 1A para 4(1)(a) (as added: see note 1 *supra*).

8 le the conditions in *ibid* Sch 1A para 5 (as added): see the text and notes 11-18 *infra*.

9 Ibid Sch 1A para 4(1)(b) (as added: see note 1 supra).

10 Ibid Sch 1A para 4(2) (as added: see note 1 supra). The charge is £100: see Sch 1A para 4(2) (as so added). Any sum which is payable by way of, or on account of, a charge imposed under Sch 1A para 4(2) (as added) may accompany the application to which it relates or may be recovered as a civil debt by the food authority after it has determined the application: Sch 1A para 4(3) (as so added).

11 Ie the provisions of the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended).

12 Ibid Sch 1A para 5(1)(a) (as added: see note 1 supra). The regulations relating to temperature control are the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended): see PARA 299 et seq post.

13 Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 5(1)(b).

14 'HACCP procedures' mean procedures critical to ensuring food safety by Hazard Analysis and Critical Control Points systems and which are based on the following principles: (1) analysis of the potential food hazards in a food business operation; (2) identification of the points in those operations where food hazards may occur; (3) deciding which of the points identified are critical to ensuring food safety ('critical points'); (4) identification and implementation of effective control and monitoring procedures (including critical limits), at those critical points; (5) verification to confirm that the Hazard Analysis and Critical Control Points system is working effectively; (6) review of the analysis of food hazards, the critical points and the control and monitoring procedures periodically, and whenever the food business' operations change; and (7) documentation of all procedures appropriate to the effective application of the principles listed in heads (1)-(6) supra, including documentation which identifies the persons who have undertaken training in accordance with ibid Sch 1A para 5(1)(b) or (c) (as added) (see head (b) and head (c) in the text): Sch 1A para 1 (as added: see note 1 supra).

15 Ibid Sch 1A para 5(1)(c) (as added: see note 1 supra).

16 Ibid Sch 1A para 5(1)(d) (as added: see note 1 supra).

17 Ibid Sch 1A para 5(2) (as added: see note 1 supra). Records made available under Sch 1A para 5(2) (as added) must be either: (1) in writing; or (2) where there is a means by which they may be read, in electronic form: Sch 1A para 5(3) (as so added). Records relating to the HACCP procedures which apply in the shop must be kept: (a) in the case of any document which sets out those procedures, until it is replaced by a further document which sets out those procedures; and (b) in the case of any document which records how those procedures have been applied, for the period of not less than 12 months which begins on the date of its creation: Sch 1A para 5(4) (as so added). Records of the training which persons have undertaken to enable them to carry out operations in the shop must be kept until those persons cease to be retained to carry out those operations: Sch 1A para 5(5) (as so added).

In mixed business premises in which over half of the floor area is laid out for the storage, handling or display of goods other than meat, the conditions in heads (a)-(d) in the text, and the requirements relating to records in Sch 1A para 5(2)-(5) (as added), apply only to the following parts of the premises:

- 1 (i) where both unwrapped raw meat and ready to eat food are stored, handled or displayed in the same part of the premises, that part (Sch 1A para 5(6)(a) (as so added));
- 2 (ii) where unwrapped raw meat is handled, stored or displayed in one part of the premises and ready to eat food is stored, handled or displayed in an adjoining part of the premises, each of those parts (Sch 1A para 5(6)(b) (as so added)); and
- 3 (iii) where the same food handler is working on the storage, handling or display of both unwrapped raw meat and ready to eat food, or the same equipment is in use in relation to such meat and food, each part in which such meat or food is stored, handled or displayed (Sch 1A para 5(6)(c) (as so added)).

18 Ibid Sch 1A para 5(7) (as added: see note 1 supra).

19 Ibid Sch 1A para 6 (as added: see note 1 supra), which is expressed to be subject to Sch 1A paras 7, 10 (as added). Where a further licence is granted to a person who has held a licence for not less than 8 months and both licences relate to the same butcher's shop, that further licence may be issued for the period of one year which commences immediately after the expiry of the other licence held by that person: Sch 1A para 7 (as so added), which is expressed to be subject to Sch 1A para 10 (as added).

20 Ibid Sch 1A para 8 (as added: see note 1 supra).

21 Ie the conditions specified in ibid Sch 1A para 5 (as added) (see the text and notes 11-18 supra).

22 Ibid Sch 1A para 10(1) (as added: see note 1 supra). A notice given under Sch 1A para 10(1) (as added) must specify the conditions specified in Sch 1A para 5 (as added) (see the text and notes 12-18 supra) which have been breached: Sch 1A para 10(2) (as so added). A decision to revoke or suspend a licence made under Sch 1A para 10(1) (as added) does not take effect until the time specified in the Food Safety Act 1990 s 37(5) for bringing an appeal has expired or, if an appeal under that provision is lodged, until the appeal is finally disposed of or abandoned: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, Sch 1A para 10(3) (as so added).

23 Ibid reg 6(1) (prospectively amended by SI 2000/930 with effect from 1 November 2000). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 6(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

294-298 Hygiene

SI 1995/1763 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

296 Licences for butchers' shops

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 12--SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(ii) Hygiene/297. Duty to report certain medical conditions to proprietor.

297. Duty to report certain medical conditions to proprietor.

A person working in a food¹ handling area who knows or suspects that he is suffering from or that he is a carrier of a disease likely to be transmitted through food, or is afflicted with an infected wound, a skin infection, sores, diarrhoea or with any analogous medical condition, in circumstances where there is any likelihood of him directly or indirectly contaminating any food with pathogenic micro-organisms, must report that knowledge, suspicion or affliction to the proprietor² of the food business³ at which he is working⁴.

If any person contravenes this rule he is guilty of an offence⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'proprietor' see PARA 285 note 2 ante.

3 For the meaning of 'food business' see PARA 241 note 11 ante.

4 Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 5(1). However, this provision does not apply to a person unless he is working in a food handling area in which a food business proprietor, seeking to comply with reg 4(2)(d) (see PARA 294 ante) and Sch 1 Ch VIII para 2 (personal hygiene) (see PARA 295 ante), may be required to refuse him permission to work: reg 5(2).

5 Ibid reg 6(1). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 6(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

294-298 Hygiene

SI 1995/1763 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(ii) Hygiene/298. Enforcement and execution.

298. Enforcement and execution.

Each food authority¹ must enforce and execute the Food Safety (General Food Hygiene) Regulations 1995² within its area³, and must: (1) ensure that food premises⁴ are inspected with a frequency which has regard to the risk associated with those premises⁵; and (2) ensure that inspections include a general assessment of the potential food safety hazards associated with the food business being inspected⁶; (3) pay particular attention to the critical control points identified by food businesses to assess whether the necessary monitoring and verification controls are being operated⁷; and (4) give due consideration to whether the proprietor⁸ of a food business has acted in accordance with any relevant guide to good hygiene practice⁹.

1 For these purposes, 'food authority' does not include: (1) the council of a non-metropolitan county in England or Wales, unless that council is a unitary authority; or (2) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1). 'Unitary authority' means: (a) in England, any authority which is the sole principal council for its local government area; and (b) in Wales, a county or county borough council established under the Local Government (Wales) Act 1994: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 2(1).

2 See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended).

3 Ibid reg 8(1).

4 For the meaning of 'food' see PARA 201 ante. For the meaning of 'food premises' see PARA 241 note 11 ante.

5 Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 8(2)(a)(i).

6 Ibid reg 8(2)(a)(ii). For the meaning of 'food business' see PARA 295 note 2 ante.

7 Ibid reg 8(2)(b).

8 For the meaning of 'proprietor' see PARA 285 note 2 ante.

9 See the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 8(2)(c) (amended by SI 2000/656). For the meaning of 'hygiene' see PARA 295 note 6 ante. Any relevant guide to good hygiene practice must have been: (1) forwarded by the Secretary of State to the Commission pursuant to EC Council Directive 93/43 (OJ 175, 19.7.93, p 1) art 5.5, unless the Secretary of State has announced that it no longer complies with art 3; or (2) developed in accordance with arts 5.6 and 7 and published in accordance with art 5.8: Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763, reg 8(2)(c). As to the Secretary of State see PARA 224 ante.

UPDATE

294-298 Hygiene

SI 1995/1763 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/299. Application of rules relating to temperature control.

(iii) Temperature Control

299. Application of rules relating to temperature control.

The Food Safety (Temperature Control) Regulations 1995¹ provide general rules with regard to temperature control in relation to foodstuffs which apply with the exception of²: (1) primary production³; and (2) persons carrying on any activity which is regulated by or under specific regulations⁴, but only in respect to the carrying on of that activity⁵.

1 See the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended): see *infra*; and PARAS 300-306 post.

The Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 282 ante), s 3 (presumptions that food is intended for human consumption) (see PARA 282 ante), s 20 (offences due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (documentary evidence) (see PARA 269 ante), s 33 (obstruction of officers) (see PARA 271 ante), s 34 (time limit for prosecutions) (see PARA 459 post), s 36 subject to certain modifications (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 post), apply for the purposes of the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended) as they apply for the purposes of the Food Safety Act 1990 s 8 (selling food not complying with food safety requirements) (see PARA 283 ante), s 14 (selling food not of the nature or substance or quality demanded) (see PARA 360 post) and s 15 (falsely describing or presenting food) (see PARA 372 post), and unless the context otherwise requires, a reference in them to the Food Safety Act 1990 is to be construed, for the purposes of the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended), as a reference to those regulations: reg 18.

2 See *ibid* reg 3(1).

3 See *ibid* reg 3(1)(a). 'Primary production' includes harvesting, slaughtering and milking: reg 2(1).

4 As to the specific regulations see PARA 326 post.

5 See the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 3(1)(b); and PARA 326 post. Notwithstanding reg 3(1)(b), the provisions of regs 4-13 (as amended), 16 (see PARAS 300-306 post) apply to a person carrying on any activity which is regulated by the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Pt III (regs 21-41) (as amended) (see PARA 342-345 post), unless, in the case of a particular product at a particular stage in its production, a provision in any of those regulations imposes a further or alternative requirement in relation to the temperature at which that product is to be kept at that stage in its production: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 3(3) (amended by SI 1998/994).

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

299 Application of rules relating to temperature control

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/300. Chill holding requirements.

300. Chill holding requirements.

No person may keep any food¹ which is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and with respect to which any commercial operation² is being carried out, at or in food premises³ at a temperature above 8° Celsius⁴. However, this does not apply to:

- 135 (1) any food which, as part of a mail order transaction, is being conveyed by post or by a private or common carrier to an ultimate consumer⁵;
- 136 (2) food which has been cooked or reheated, is for service or on display for sale⁶, and needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins⁷;
- 137 (3) food which, for the duration of its shelf life⁸, may be kept at ambient temperatures with no risk to health⁹;
- 138 (4) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro-organisms at ambient temperatures, unless after or by virtue of that process the food was contained in a hermetically sealed container and that container has been opened¹⁰;
- 139 (5) food which must be ripened or matured at ambient temperatures, until the process of ripening or maturation is completed¹¹;
- 140 (6) raw food intended for further processing (which includes cooking) before human consumption¹², but only if that processing, if undertaken correctly, will render that food fit for human consumption¹³;
- 141 (7) food to which European provisions¹⁴ relating to marketing standards for poultry or eggs apply¹⁵.

If any person contravenes the chill holding requirements he is guilty of an offence¹⁶.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'commercial operation' see PARA 241 note 11 ante.

3 For the meaning of 'food premises' see PARA 241 note 11 ante.

4 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 4(1), which is expressed to be subject to regs 4(2), 5 (see the text and notes 5-15 infra).

5 Ibid reg 4(2). However, subject to reg 5 (see the text and notes 7-15 infra), no person may supply by mail order any food which is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and is being or has been conveyed by post or by a private or common carrier to an ultimate consumer, at a temperature which has given rise to or is likely to give rise to a risk to health: reg 4(3). 'Ultimate consumer' means any person who buys otherwise than for the purpose of resale, for the purposes of a catering establishment or for the purposes of a manufacturing business: reg 2(1).

6 For the meaning of 'sale' see PARA 262 note 5 ante.

7 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 5(a).

8 'Shelf life' means: (1) in relation to food with respect to which an indication of minimum durability is required in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 20 (see PARA 385 post), the period up to and including the date required to be included in that indication; (2) in relation to food with respect to which a 'use by' date is assigned in the form required in accordance with reg 21 (see PARA 386 post), the

period up to and including that date; (3) in relation to food which is not required to bear an indication of minimum durability or a 'use by' date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 2(1) (definition substituted by SI 1996/1499; and amended by SI 1998/1398).

In determining whether any matter involves a risk to food safety, regard must be had to the nature of the food, the manner in which it is handled and packed, any process to which the food is subjected before supply to the consumer, and the conditions under which it is displayed or stored: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 2(2).

9 Ibid reg 5(b).

10 Ibid reg 5(c).

11 Ibid reg 5(d).

12 For the meaning of 'human consumption' see PARA 201 note 3 ante.

13 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 5(e).

14 Ie EC Council Regulation 1906/90 (OJ L173, 6.7.90, p 1) on certain marketing standards for poultry (as amended); and EC Council Regulation 1907/90 (OJ L173, 6.7.90, p 5) on certain marketing standards for eggs (as amended).

15 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 5(f), (g).

16 Ibid reg 17(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 17(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

300 Chill holding requirements

NOTE 14--EC Council Regulation 1907/90 repealed and replaced from 1 July 2007 by EC Council Regulation 1028/2006 (OJ L186 7.7.2006 p 1) on marketing standards for eggs. For detailed rules implementing Regulation 1028/2006, see EC Commission Regulation 557/2007 (OJ L132, 24.5.2007, p 5) (as amended).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/301. Defences to the chill holding requirements.

301. Defences to the chill holding requirements.

In any proceedings for an offence of contravening the chill holding requirement¹, it is a defence for a person charged ('the defendant') to prove that²:

- 142 (1) a food business³ responsible for manufacturing, preparing or processing the food has recommended that it is kept at or below a specified temperature between 8° Celsius and ambient temperatures for a period not exceeding a specified shelf life⁴;
- 143 (2) that recommendation has, unless the defendant is that food business, been communicated to the defendant either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction⁵;
- 144 (3) the food was not kept by the defendant at a temperature above the specified temperature⁶; and
- 145 (4) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded⁷.

It is also a defence for a person charged to prove that the food:

- 146 (a) was for service or on display for sale⁸;
- 147 (b) the food had not previously been kept for service or on display for sale at a temperature above 8° Celsius or, in appropriate circumstances, the recommended temperature⁹; and
- 148 (c) the food had been kept for service or on display for sale for a period of less than four hours¹⁰.

It is also a defence to prove that the food was:

- 149 (i) being transferred (A) to a vehicle used for the purposes of the activities of a food business from; or (B) from a vehicle used for the purposes of the activities of a food business to, premises¹¹ at which the food was going to be kept at or at below 8° Celsius or, in appropriate circumstances, the recommended temperature¹²; or
- 150 (ii) kept at a temperature above 8° Celsius or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as (A) to accommodate the practicalities of handling during and after processing or preparation; (B) the defrosting of equipment¹³; or (C) temporary breakdown of equipment¹⁴,

and was kept at a temperature above 8° Celsius or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety¹⁵.

¹ le under the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 4(1): see PARA 300 ante.

² Ibid regs 6(1), 7(1), (2).

3 'Food business' means any undertaking, whether carried on for profit or not and whether public or private, carrying out any or all of the following operations, namely, preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling or offering for sale or supply of food: reg 2(1). For the meaning of 'food' see PARA 201 ante; for the meaning of 'preparation' see PARA 201 note 3 ante; and for the meaning of 'sale' see PARA 262 note 5 ante.

4 Ibid reg 6(1)(a). For the meaning of 'shelf life' see PARA 300 note 8 ante. A food business responsible for manufacturing, preparing or processing food may not recommend that any food is kept at or below a specified temperature between 8° Celsius and ambient temperatures, and for a period not exceeding a specified shelf life, unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the specified temperature: reg 6(2).

If any person contravenes reg 6(2) he is guilty of an offence (reg 17(1)) and liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both (reg 17(2)). As to the statutory maximum see PARA 261 note 23 ante.

For the purposes of regs 6(2), 9(1), the presence of a scientific assessment of the safety of any food in a guide to good hygiene practice which has been: (1) forwarded by the Food Standards Agency to the Commission pursuant to EC Council Directive 93/43 (OJ L175, 19.7.93, p 1) art 5.5, unless the Food Standards Agency has announced that the guide no longer complies with art 3; or (2) developed in accordance with arts 5.6 and 7 and published in accordance with art 5.8, must, until the contrary is proved, be considered sufficient evidence that the scientific assessment in question is well-founded: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 12 (amended by SI 2000/656).

5 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 6(1)(b).

6 Ibid reg 6(1)(c).

7 Ibid reg 6(1)(d).

8 Ibid reg 7(1)(a).

9 Ibid reg 7(1)(b). 'Recommended temperature' means a specified temperature which has been recommended in accordance with reg 6(1)(a) (see head (1) in the text): reg 2(1).

10 Ibid reg 7(1)(c).

11 For these purposes, 'premises' includes vehicles: see ibid reg 7(2)(a). For the meaning of 'premises' see PARA 204 note 16 ante.

12 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 7(2)(a).

13 For the meaning of 'equipment' see PARA 206 note 9 ante.

14 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 7(2)(b).

15 Ibid reg 7(2).

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/302. Hot holding requirements.

302. Hot holding requirements.

No person may in the course of the activities of a food business¹ keep at a temperature below 63° Celsius any food which²:

- 151 (1) has been cooked or reheated³;
- 152 (2) is for service or on display for sale⁴; and
- 153 (3) needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins, at or in food premises⁵.

If any person contravenes these requirements he is guilty of an offence⁶.

1 For the meaning of 'food' see PARA 201 ante: and for the meaning of 'food business' see PARA 301 note 3 ante.

2 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 8.

3 Ibid reg 8(a).

4 Ibid reg 8(b). For the meaning of 'sale' see PARA 262 note 5 ante.

5 Ibid reg 8(c). For the meaning of 'food premises' see PARA 241 note 11 ante.

6 Ibid reg 17(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 17(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/303. Defences to the hot holding requirements.

303. Defences to the hot holding requirements.

In any proceedings for an offence of contravening the hot holding requirements¹, it is a defence for a person charged to prove that²:

- 154 (1) a well-founded scientific assessment of the safety of the food³ at temperatures below 63° Celsius has concluded that there is no risk to health if, after cooking or reheating, the food is held for service or on display for sale⁴ at a holding temperature which is below 63° Celsius, and for a period not exceeding a specified period of time⁵; and
- 155 (2) at the time of the commission of the alleged offence, the food was held in a manner which is justified in the light of that scientific assessment⁶.

It is also a defence for a person charged to prove that the food:

- 156 (a) had been kept for service or on display for sale for a period of less than two hours⁷; and
- 157 (b) had not previously been kept for service or on display for sale by that person⁸.

1 le the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 8: see PARA 302 ante.

2 Ibid reg 9(1), (2).

3 See PARA 301 ante. For the meaning of 'food' see PARA 201 ante.

4 For the meaning of 'sale' see PARA 262 note 5 ante.

5 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 9(1)(a).

6 Ibid reg 9(1)(b).

7 Ibid reg 9(2)(a).

8 Ibid reg 9(2)(b).

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/304. General requirement for food which is a risk to health.

304. General requirement for food which is a risk to health.

No person in the course of the activities of a food business¹ may keep foodstuffs which are raw materials, ingredients, intermediate products or finished products, and likely to support the growth of pathogenic micro-organisms or the formation of toxins, at temperatures which would result in a risk to health².

A person may be in contravention of this provision notwithstanding that he complies with the chill holding requirements³ and the hot holding requirements⁴. In particular, the keeping of perishable foodstuffs at above a maximum storage temperature recommended in any special storage conditions⁵ for them may be in contravention of this provision notwithstanding that they are kept at a temperature of 8° Celsius or below⁶.

If any person contravenes the general requirement for food which is a risk to health he is guilty of an offence⁷.

1 For the meaning of 'food' see PARA 201 ante; and for the meaning of 'food business' see PARA 301 note 3 ante.

2 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 10(1). However, consistent with food safety, limited periods outside temperature control are permitted where necessary to accommodate the practicalities of handling during preparation, transport, storage, display and service of food: reg 10(2). For the meaning of 'preparation' see PARA 201 note 3 ante.

3 *Ibid* reg 4: see PARA 300 ante.

4 *Ibid* reg 10(3). *Ibid* reg 8: see PARA 302 ante.

5 'Special storage conditions' is to be construed in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 5(d) (see PARA 375 post): Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 2(1) (definition amended by SI 1996/1499).

6 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 10(3).

7 *Ibid* reg 17(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 17(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/305. Cooling of food requirement.

305. Cooling of food requirement.

A food business¹ responsible for cooling any food which must, by virtue of the temperature control requirements in England and Wales², be kept at a temperature below ambient temperatures, must cool that food as quickly as possible following the final heat processing stage, or if no heat process is applied, the final preparation³ stage, to the temperature at which, by virtue of the temperature control requirements in England and Wales, it must be kept⁴.

If any person contravenes the cooling of food requirement he is guilty of an offence⁵.

1 For the meaning of 'food' see PARA 201 ante; and for the meaning of 'food business' see PARA 301 note 3 ante.

2 I.e. the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, Pt II (regs 4-12): see PARAS 299-304 ante.

3 For the meaning of 'preparation' see PARA 201 note 3 ante.

4 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 11.

5 Ibid reg 17(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 17(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iii) Temperature Control/306. Enforcement and execution.

306. Enforcement and execution.

Each food authority¹ must enforce and execute the Food Safety (Temperature Control) Regulations 1995² within its area³, and must: (1) ensure that food premises⁴ are inspected with a frequency which has regard to the risk associated with those premises⁵; and (2) give due consideration to whether the proprietor⁶ of a food business⁷ has acted in accordance with any relevant guide to good hygiene practice⁸.

1 For these purposes, 'food authority' does not include: (1) the council of a non-metropolitan county in England or Wales, unless that council is a unitary authority; or (2) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 2(1). 'Unitary authority' means: (a) in England, any authority which is the sole principal council for its local government area; and (b) in Wales, a county or county borough council established under the Local Government (Wales) Act 1994: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 2(1).

2 Ie the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200 (as amended).

3 Ibid reg 19(1).

4 For the meaning of 'premises' see PARA 204 note 16 ante.

5 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 19(2)(a).

6 For the meaning of 'proprietor' see PARA 285 note 2 ante.

7 For the meaning of 'food' see PARA 201 ante; and for the meaning of 'food business' see PARA 301 note 3 ante.

8 Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 19(2)(b) (amended by SI 2000/656), which is expressed to be without prejudice to the Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 12 (as amended) (see PARA 301 ante). Any relevant guide to good hygiene practice must have been: (1) forwarded by the Secretary of State to the Commission pursuant to EC Council Directive 93/43 (OJ L175, 19.7.93, p 1), art 5.5, unless the Food Standards Agency has announced that it no longer complies with art 3; or (2) developed in accordance with arts 5.6 and 7 and published in accordance with art 5.8: Food Safety (Temperature Control) Regulations 1995, SI 1995/2200, reg 19(2)(b) (as so amended).

UPDATE

299-306 Temperature Control

SI 1995/2200 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/A. IMPORTED FOOD GENERALLY/307. Application of rules relating to imported food.

(iv) Imported Food

A. IMPORTED FOOD GENERALLY

307. Application of rules relating to imported food.

The Imported Food Regulations 1997¹ provide general rules in relation to imported food which apply with the exception of the importation of any food² which is an exempt product of animal origin³.

¹ See the Imported Food Regulations 1997, SI 1997/2537: see PARAS 308-311 post.

The Food Safety Act 1990 s 2 (as amended) (extended meaning of 'sale') (see PARA 262 ante), s 3 (presumptions that food is intended for human consumption) (see PARA 282 ante), s 20 (offences due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 33 (obstruction etc of officers) (see PARA 271 ante), s 34 (time limit for prosecutions) (see PARA 459 post), s 36 subject to certain modifications (offences by body corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante), apply for the purposes of the Imported Food Regulations 1997, SI 1997/2537, as they apply for the purposes of the Food Safety Act 1990 s 8 (selling food not complying with food safety requirements) (see PARA 283 ante), s 14 (selling food not of the nature or substance or quality demanded) (see PARA 360 post) and s 15 (falsely describing or presenting food) (see PARA 372 post), and unless the context otherwise requires, a reference in them to the Food Safety Act 1990 is to be construed, for the purposes of the Imported Food Regulations 1997, SI 1997/2537, as a reference to those regulations: reg 9(1). The Food Safety Act 1990 ss 8(2), (3), 30 (as amended) also apply for the purposes of the Imported Food Regulations 1997, SI 1997/2537, with modifications: see reg 8(2), (3), (4).

² For the meaning of 'food' see PARA 201 ante.

³ Imported Food Regulations 1997, SI 1997/2537, reg 3(1). 'Exempt product of animal origin' means: (1) fishery products and products derived from aquaculture animals; (2) live filter-feeding lamellibranch molluscs, echinoderms, tunicates and marine gastropods; (3) frogs' legs and snails; (4) the meat of domestic animals of the following species: bovine animals (including buffalo of the species *Bubalus bubalis* and *Bison bison*), swine, sheep, goats, solipeds and rabbits; (5) the meat of wild land mammals which are hunted; (6) the meat of non-domesticated animals which are reared and slaughtered in captivity; (7) the meat of domestic fowls, turkeys, guinea fowls, ducks and geese; (8) the meat of birds, including ratites, which are either wild or not generally considered domestic (including the meat of such birds in circumstances where they have been reared and slaughtered in captivity); (9) meat preparations, meat products, mechanically recovered meat and minced meat; (10) shell eggs laid by a hen, duck, goose, turkey or guinea fowl; (11) egg products, other than finished foodstuffs, obtained from eggs laid by a hen, duck, goose, turkey or guinea fowl, including where partially supplemented by other foodstuffs or additives and where liquid, concentrated, crystallised, frozen, quick-frozen, coagulated or dried; (12) milk and milk-based products; (13) honey; (14) meat extracts and meat powder; (15) lard and rendered animal fat; (16) greaves, fishmeal, meatmeal and pork-rind powder; (17) stomachs, bladders and intestines; (18) blood and blood products; (19) bones, bone products, horns, horn products, hooves and hoof products; and (20) gelatin and tallow: regs 2(1), 3(1), 4, Sch 1. 'Milk' means milk of a cow, sheep, goat or buffalo: reg 2(1).

For the meaning of 'meat preparations' see PARA 335 note 4 post; for the meaning of 'meat products' see PARA 328 note 1 post; and for the meaning of 'minced meat' see PARA 335 note 3 post; definitions all applied by reg 2(1).

UPDATE

307-311 Imported food generally

SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

307 Application of rules relating to imported food

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/A. IMPORTED FOOD GENERALLY/308. Prohibition on importing certain food from third countries.

308. Prohibition on importing certain food from third countries.

No person may import into Great Britain¹ from a third country² any food³ intended for sale⁴ for human consumption⁵ (which is not an exempt product of animal origin⁶) which fails to comply with the food safety requirements⁷ or is unsound or unwholesome⁸.

Food is from a third country if it originates, in that country and: (1) unless head (2) below applies, when it arrives in Great Britain it is not in free circulation⁹ in member states; or (2) it arrives in Great Britain from another part of the British Islands¹⁰, having been under customs charge in that part of the British Islands, and having been sent to a place of destination in Great Britain for examination¹¹ under the Imported Food Regulations 1997¹², and when it first arrived in the British Islands it was not in free circulation in member states¹³.

If any person contravenes the prohibition on importing certain food from third countries, he is guilty of an offence¹⁴.

1 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

2 'Third country' means any country or territory which is not part of the customs territory of the European Community: Imported Food Regulations 1997, SI 1997/2537, reg 2(1).

3 For the meaning of 'food' see PARA 201 ante. A person is a person importing food from a third country if, whether as owner, consignor, consignee, agent or broker he is in possession of food being imported from a third country or he is in any way entitled to the custody or control of food being imported from a third country: *ibid* reg 3(3).

4 For the meaning of 'sale' see PARA 262 note 5 ante.

5 For the meaning of 'human consumption' see PARA 201 note 3 ante.

6 See PARA 307 ante. For the meaning of 'exempt product of animal origin' see PARA 307 note 3 ante.

7 As to food safety requirements see PARA 283 ante.

8 Imported Food Regulations 1997, SI 1997/2537, reg 4. 'Unsound' and 'unwholesome' are not defined for the purposes of the Imported Food Regulations 1997, SI 1997/2537.

9 'Free circulation' has the same meaning as in the Treaty Establishing the European Community (EC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 9.2: Imported Food Regulations 1997, SI 1997/2537, reg 2(1). However, 'free circulation' is not defined by the EC Treaty, it merely establishes that the case law as to the meaning of art 9.2 is applicable.

10 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1.

11 'Examination', with regard to the examination of food by an authorised officer of a food authority, may include a physical, chemical and microbiological examination of the food; and 'examine' is to be construed accordingly: Imported Food Regulations 1997, SI 1997/2537, reg 2(1). For these purposes, 'food authority' means: (a) with regard to England, as respects the Isles of Scilly, the Council of the Isles of Scilly, as respects the City of London (including the Temples), the Common Council, as respects any other part of England if it is situated in a port health district, the port health authority for that district, or if it is not situated in a port health district, the district council or unitary authority in whose area that part is situated; (b) as respects any part of Wales, if it is situated in a port health district, the port health authority for that district, or if it is not situated in a port health district, the county or county borough council in whose area that part is situated: reg 2(1). 'Unitary authority' means an authority in England which is the sole principal council for its local government area: reg 2(1).

12 le the Imported Food Regulations 1997, SI 1997/2537.

13 Ibid reg 3(2).

14 Ibid reg 8(1). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 8(2). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

307-311 Imported food generally

SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/A. IMPORTED FOOD GENERALLY/309. Enforcement responsibilities.

309. Enforcement responsibilities.

The responsibility for enforcement of the Imported Food Regulations 1997¹ is that of each food authority² in respect of its area³. However, where an authorised officer⁴ of a food authority for an area in which food⁵ from a third country⁶ has entered the British Islands⁷ considers it reasonable that examination of the food (1) for the purposes of the Imported Food Regulations 1997 should be deferred until the food arrives at a specified place of destination elsewhere in Great Britain⁸; or (2) should take place under regulations with respect to imported food in force in Northern Ireland when the food arrives at a specified place of destination in Northern Ireland⁹, then the food authority for the area in which the specified place of destination is located, if in Great Britain, becomes responsible for enforcing and executing the Imported Food Regulations 1997, with respect to that food once it arrives at that place¹⁰, provided that:

- 158 (a) customs examination¹¹ of that food has been completed or has been deferred until the food reaches its place of destination elsewhere in the United Kingdom¹²; and
- 159 (b) a person importing the food¹³ gives the authorised officer an undertaking in writing that the container containing the food has been sealed and will not be opened until it reaches its specified place of destination and is available there for examination¹⁴.

Where an authorised officer of a food authority authorises the transfer of any food to another part of the United Kingdom for examination at the place of destination for that food¹⁵ he must¹⁶:

- 160 (i) notify by the most expeditious means available the food authority or, in Northern Ireland, the district council for the area in which that place is located, that the food (so described as to enable it to be identified) has not been examined, and if customs examination of the food has been deferred, of that fact¹⁷; and
- 161 (ii) send that authority or council a copy of the undertaking in writing, referred to in head (4) above, which he has been given by a person importing the food¹⁸.

Where food has been sent to a place of destination in Great Britain for examination under the Imported Food Regulations 1997 from another part of the British Islands, the food authority for the area in which that place of destination is located becomes responsible for enforcing and executing the regulations with respect to that food once it arrives in Great Britain¹⁹.

1 le the Imported Food Regulations 1997, SI 1997/2537.

2 For the meaning of 'food authority' see PARA 308 note 10 ante.

3 See the Imported Food Regulations 1997, SI 1997/2537, reg 5(1), which is expressed to be subject to reg 5(2), (4) (see the text to notes 6-14, 19 infra).

4 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante.

5 For the meaning of 'food' see PARA 201 ante.

6 For the meaning of 'third country' see PARA 308 note 2 ante. As to food originating from a third country see PARA 308 ante.

7 See the Imported Food Regulations 1997, SI 1997/2537, reg 5(2)(a). For the meaning of 'British Islands' see PARA 308 note 10 ante.

8 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

9 Imported Food Regulations 1997, SI 1997/2537, reg 5(2)(c).

10 Ibid reg 5(2).

11 For the meaning of 'examination' see PARA 308 note 10 ante.

12 Imported Food Regulations 1997, SI 1997/2537, reg 5(2)(b). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

13 As to a person importing food from a third country see PARA 308 ante.

14 Imported Food Regulations 1997, SI 1997/2537, reg 5(2)(d).

15 Ie either under the Imported Food Regulations 1997, SI 1997/2537, or, if that place is in Northern Ireland, under regulations in force with respect to imported food in Northern Ireland: see reg 5(3).

16 Ibid reg 5(3).

17 Ibid reg 5(3)(a).

18 Ibid reg 5(3)(b).

19 Ibid reg 5(4).

UPDATE

307-311 Imported food generally

SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/A. IMPORTED FOOD GENERALLY/310. Examination of food by a food authority.

310. Examination of food by a food authority.

Where an authorised officer of a food authority¹ is of the opinion that he should examine² for the purposes of the Imported Food Regulations 1997³ a batch, lot or consignment of food⁴ which is in or due to arrive in the area of his food authority, any person importing the food⁵ must provide all such facilities as the officer may reasonably require for the examination of the food⁶.

An authorised officer of a food authority who considers that a sample of any food which he proposes to examine or is examining should be procured may, by a notice in writing given to any person importing the food, or any other person in possession of the food who is entitled to be in possession of it (other than an officer of Customs and Excise⁷), require that, once he has procured the sample, the food is not to be removed from the place specified in the notice for a specified period not exceeding six days exclusive of Saturdays, Sundays and public holidays, unless the authorised officer's examination of the food (a process which may include submitting a sample of the food to be analysed by a public analyst or examined by a food examiner) has been completed⁸. After a notice has been given to a person forbidding the removal of specified food, an authorised officer of the food authority responsible for the notice must, without undue delay and in any event within the period specified in the notice, complete the examination of the food in respect of which the notice was given⁹.

Where an authorised officer of a food authority has given a person a notice forbidding the removal of specified food, that food must not, prior to the completion of the examination of it by an authorised officer of the food authority, be removed by any person contrary to the terms of the notice except with the express written permission of an authorised officer of the food authority which is responsible for the notice, or if the food is under customs charge, an officer of Customs and Excise¹⁰. An officer of Customs and Excise must, before giving any person written permission to remove any food which is the subject of a notice, inform an authorised officer of the food authority responsible for the notice of his intention to do so¹¹.

Any person who is aggrieved by a decision to serve a notice may appeal against that notice to a magistrates' court, who may order that the notice be withdrawn or that such shorter period be fixed for examination of the food as appears to be reasonable in the circumstances¹².

1 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante; and for the meaning of 'food authority' see PARA 308 note 10 ante.

2 For the meaning of 'examine' see PARA 308 note 10 ante.

3 I.e. the Imported Food Regulations 1997, SI 1997/2537.

4 For the meaning of 'food' see PARA 201 ante.

5 As to a person importing food from a third country see PARA 308 ante.

6 Imported Food Regulations 1997, SI 1997/2537, reg 6(1). If any person contravenes reg 6(1), he is guilty of an offence (reg 8(1)) and liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both (reg 8(2)). As to the statutory maximum see PARA 261 note 23 ante.

7 'Officer of Customs and Excise' means: (1) a person commissioned by the Commissioners of Customs and Excise; or (2) any other person acting under the authority of the Commissioners of Customs and Excise who is

authorised by them to perform the duties to be performed by an officer of Customs and Excise set out in the Imported Food Regulations 1997, SI 1997/2537: reg 2(1). As to Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

8 Ibid reg 6(2).

9 Ibid reg 6(3).

10 Ibid reg 6(4). If any person contravenes reg 6(4), he is guilty of an offence (reg 8(1)) and liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both (reg 8(2)).

11 Ibid reg 6(5).

12 Ibid reg 6(6).

UPDATE

307-311 Imported food generally

SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/A. IMPORTED FOOD GENERALLY/311. Re-export, alternative use or destruction of certain food.

311. Re-export, alternative use or destruction of certain food.

If, on an inspection or examination¹ of food² for the purposes of the Imported Food Regulations 1997³, it appears to an authorised officer of a food authority⁴ that a batch, lot or consignment of food fails to comply with the food safety requirements⁵ or is unsound or unwholesome, he may, after appropriate consultation with a person importing the food⁶, serve on that person a notice stating that the food may be used in Great Britain⁷ for purposes other than human consumption⁸, or ordering the re-dispatch of the food outside the European Community⁹.

Any notice served must state the grounds the authorised officer has for believing that the food fails to comply with food safety requirements or, as the case may be, is unsound or unwholesome, and inform the person on whom the notice is served of the right of appeal¹⁰. Any person who is aggrieved by a decision to serve a notice may within six days exclusive of Saturdays, Sundays and public holidays appeal against that decision to a magistrates' court, who may cancel or affirm that notice¹¹.

No person may breach the terms of a notice served unless that notice has been withdrawn by the food authority serving the notice or cancelled by a court¹².

1 For the meaning of 'examination' see PARA 308 note 10 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 Ie the Imported Food Regulations 1997, SI 1997/2537.

4 For the meaning of 'authorised officer' in relation to a food authority see PARA 253 ante; and for the meaning of 'food authority' see PARA 308 note 10 ante. As to food authorities see PARA 251 et seq ante.

5 As to food safety requirements see PARA 283 ante.

6 As to a person importing food from a third country see PARA 308 ante.

7 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

8 For the meaning of 'human consumption' see PARA 201 note 3 ante.

9 Imported Food Regulations 1997, SI 1997/2537, reg 7(1). Subject to reg 7(6), the Food Safety Act 1990 s 9 (inspection and seizure of suspected food) (see PARA 284 ante) applies with respect to food intended for human consumption which: (1) is or has been imported into Great Britain from a third country; and (2) on an inspection or examination by an authorised officer, appears to that officer to fail to comply with food safety requirements or, as the case may be, to be unsound or unwholesome, as s 9 applies with respect to food intended for human consumption which has been sold or is offered or exposed for sale where on an inspection by an authorised officer it appears to that officer that the food fails to comply with food safety requirements: Imported Food Regulations 1997, SI 1997/2537, reg 7(5). However, for the purposes of the Imported Food Regulations 1997, SI 1997/2537, the Food Safety Act 1990 s 9 applies with the following modification, that is to say that the reference in s 9(5)(a) to s 7 (see PARA 282 ante) or s 8 (see PARA 283 ante) is to be construed as a reference to the Imported Food Regulations 1997, SI 1997/2537: reg 7(6).

10 Ibid reg 7(2).

11 Ibid reg 7(3).

12 Ibid reg 7(4). If any person contravenes reg 7(4), he is guilty of an offence (reg 8(1)) and liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both (reg 8(2)). As to the statutory maximum see PARA 261 note 23 ante.

UPDATE

307-311 Imported food generally

SI 1997/2537 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

311 Re-export, alternative use or destruction of certain food

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/B. IMPORTED MEAT AND MEAT PRODUCTS/312. Application of rules relating to imported meat and meat products.

B. IMPORTED MEAT AND MEAT PRODUCTS

312. Application of rules relating to imported meat and meat products.

The Imported Food Regulations 1984¹ provide rules in relation to any fresh meat² or meat product³. They do not apply to vitamin concentrates containing meat, pharmaceutical products containing meat, gelatine, rennet, or meat products, of which meat is not a principal ingredient and which do not contain fragments of meat⁴, nor do they apply to fresh meat to which the Fresh Meat (Import Conditions) Regulations 1996⁵ apply⁶.

1 Ie the Imported Food Regulations 1984, SI 1984/1918 (as amended). As to meat hygiene see PARA 327 et seq post.

2 'Fresh meat' means the flesh or other edible parts of a mammal or bird, which has not been subjected to any treatment or process other than chilling, freezing, vacuum packing or packing in a controlled atmosphere and includes minced, chopped or mechanically recovered meat, and meat treated by the addition of seasonings: *ibid* reg 2.

3 *Ibid* reg 12(2). 'Meat product' means any product prepared wholly or partly from fresh meat (which has undergone treatment to ensure a certain degree of preservation) but excluding fresh meat and those products specified in reg 12(1), Sch 1 (see the text and note 4 *infra*): reg 12(1).

4 *Ibid* Sch 1.

5 Ie the Fresh Meat (Import Conditions) Regulations 1996, SI 1996/3125.

6 See *ibid* reg 13(1).

UPDATE

312-315 Imported Meat and Meat Products

SI 1984/1918 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

312 Application of rules relating to imported meat and meat products

NOTES 5, 6--SI 1996/3125 revoked: SI 2003/3177 (England).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/B. IMPORTED MEAT AND MEAT PRODUCTS/313. Requirements as to health marks for imported meat.

313. Requirements as to health marks for imported meat.

No person may import into England and Wales for sale for human consumption any fresh meat¹, meat product² or bulk lard³ unless it bears a health mark⁴. The health mark must be one which: (1) is so placed as to be legible and clearly visible⁵; (2) conforms to the requirements as to health marks for imported meat⁶; and (3) is recognised⁷ by the Food Standards Agency⁸.

No person may import into England and Wales for sale for human consumption any fresh meat or meat product unless it has been wrapped⁹ and packed, and is transported, in accordance with the requirements as to wrapping, packing and transport of imported meat¹⁰.

1 For the meaning of 'fresh meat' see PARA 312 note 2 ante.

2 For the meaning of 'meat product' see PARA 312 note 3 ante.

3 'Bulk lard' means lard or any other rendered mammal or poultry fat transported unpackaged in the tank of a ship, aircraft, hovercraft or road vehicle: Imported Food Regulations 1984, SI 1984/1918, reg 12(1). 'Poultry' means domestic fowls, turkeys, guinea fowls, ducks and geese: reg 12(1). 'Package' means an outer container of any material into which any fresh meat or meat product is placed, but does not include a bulk container which may become part of a road vehicle or of a trailer to such a vehicle; and 'packaging' is to be construed accordingly: reg 12(1).

4 Ibid reg 13(1) (amended by SI 2000/656). 'Health mark' means a label, mark, seal, brand, stamp or other voucher: Imported Food Regulations 1984, SI 1984/1918, reg 12(1). As to the application of the Imported Food Regulations 1984, SI 1984/1918 (as amended) see PARA 312 ante. As to meat hygiene see PARA 327 et seq post.

5 Ibid reg 13(1)(a).

6 Ibid reg 13(1)(b). The requirements as to health marks for imported meat are set out in reg 13(1), Sch 3.

7 The Food Standards Agency is required to recognise a health mark which appears to the Agency to show:

4 (1) that the fresh meat to which it relates, or the meat from which the meat product to which it relates was prepared, was derived from mammals or birds inspected before and immediately after death, or in the case of mammals or birds killed when wild, was derived from mammals or birds inspected immediately after death only, and passed in accordance with criteria satisfactory to the Agency; and

5 (2) that the dressing, packing and other preparation of the fresh meat or meat product was carried out with all necessary precautions for the prevention of danger to health,

by means of a notice published in the London Gazette, and the recognition may be made subject to conditions which must be specified in the notice; and any such recognition or condition may be varied or revoked by a subsequent notice so published: ibid reg 13(3) (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

In relation to: (a) fresh meat comprising, or forming part of, the head of any animal or bird; (b) any part of a carcase which has been chopped or minced, with or without the addition of any spices, cereal products, salt, flavouring, vegetables or other ingredient; (c) scraps and trimmings; and (d) boneless veal appearing to an authorised officer to be from calves less than three months old, there must be included in the notice referred to in the Imported Food Regulations 1984, SI 1984/1918, reg 13(3) (as so amended) a statement to the effect that the recognition conferred by the notice extends to that description of fresh meat; and any such notice which does not contain a statement to that effect is deemed not to confer any recognition in respect of any description of meat set out in heads (a) to (d) supra: reg 13(4).

'Carcase' means the whole body of a slaughtered animal or bird after bleeding, skinning (except pigs) or plucking, evisceration (including removal of the limbs at the carpus (except birds) and tarsus, the head, the tail

(except birds) and the udder: reg 12(1). 'Scraps and trimmings' means small pieces and trimmings being muscular or other tissues or fat weighing less than 100 grammes, which have been removed from an animal during the preparation of wholesale cuts, or the preparation of fresh meat for the retail trade: reg 12(1). 'Pig' includes a boar, sow and hog: reg 12(1).

8 Ibid reg 13(1)(c) (amended by SI 2000/656).

9 'Wrapping' means the protection of fresh meat or meat product by the use of an initial wrapping of any material or initial container in direct contact with the fresh meat or meat product material or initial container itself, and 'wrapped' is to be construed accordingly: Imported Food Regulations 1984, SI 1984/1918, reg 12(1).

10 Ibid reg 13(2). The requirements as to wrapping, packing and transport of imported meat are contained in reg 13(2), Sch 4. 'Transport' means the movement or conveyance of any fresh meat or meat product from one place to another place: reg 12(1).

UPDATE

312-315 Imported Meat and Meat Products

SI 1984/1918 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/B. IMPORTED MEAT AND MEAT PRODUCTS/314. Requirements as to health certificates.

314. Requirements as to health certificates.

No person may import into England and Wales for sale for human consumption any fresh meat¹ which is derived from domestic bovine animals (including buffalo), swine, sheep, goats, solipeds or poultry², or any meat product³ (other than a product exempted from this requirement⁴) in the preparation of which any such fresh meat was used, unless it is accompanied by a health certificate which is valid in accordance with the following requirements⁵. A health certificate is valid if:

162 (1) it complies with the appropriate prescribed model⁶ and it contains the information specified in that model⁷;

163 (2) it is expressed at least in the English language⁸; and

164 (3) it is issued by a designated person⁹.

1 For the meaning of 'fresh meat' see PARA 312 note 2 ante.

2 For the meaning of 'poultry' see PARA 313 note 3 ante.

3 For the meaning of 'meat product' see PARA 312 note 3 ante.

4 The following meat products are exempt from the requirements of the Imported Food Regulations 1984, SI 1984/1918, reg 14:

6 (1) meat extracts, meat consommé and stock, meat sauces and similar products not containing fragments of meat (reg 14(1), Sch 2 para 1);

7 (2) whole, broken or crushed bones, meat peptones, meat powder, pork-rind powder, blood plasma, dried blood, dried blood plasma, cellular proteins, bone extracts and similar products (Sch 2 para 2);

8 (3) fats melted down from animal tissues (Sch 2 para 3);

9 (4) stomachs, bladders and intestines, cleaned and bleached, salted or dried (Sch 2 para 4); and

10 (5) products containing fragments of meat, but which contain a quantity of meat or meat product not exceeding 10% of the total weight of the final product ready for use, after preparation in accordance with the instructions for use issued by the manufacturer (Sch 2 para 5).

5 Ibid reg 14(1). As to the application of the Imported Food Regulations 1984, SI 1984/1918 (as amended) see PARA 312 ante.

6 The prescribed models are:

11 (1) in the case of a certificate which relates to fresh meat which is derived from domestic bovine animals (including buffalo), swine, sheep, goats or solipeds imported from the Channel Islands or from any member state of the European Economic Community it corresponds in form and content to the model in ibid reg 14(2)(a), Sch 6, and it contains the information specified in that model (reg 14(2)(a));

12 (2) in the case of a certificate which relates to fresh meat which is derived from domestic bovine animals (including buffalo), swine, sheep, goats or solipeds imported from any country not being the Channel Islands or a member state of the European Economic Community, it corresponds, in form and content to the model in reg 14(2)(b), Sch 7, and it contains the information specified in that model (reg 14(2)(b));

- 13 (3) in the case of a certificate which relates to meat products imported from the Channel Islands or any country of the European Economic Community, it corresponds in form and content to the model in reg 14(2)(c), Sch 8 and it contains the information specified in that model (reg 14(2)(c));
 - 14 (4) in the case of a certificate which relates to meat products imported from any country not being the Channel Islands or a member state of the European Economic Community, it corresponds in form and content to the model in reg 14(2)(d), Sch 9 and it contains the information specified in that model (reg 14(2)(d)); and
 - 15 (5) in the case of a certificate which relates to poultry meat, it corresponds in form and content to the model in reg 14(2)(e), Sch 10 and contains the information specified in that model (reg 14(2)(e)).
- 7 Ibid reg 14(2)(a)-(e).
- 8 Ibid reg 14(2)(f).
- 9 Ibid reg 14(2)(g). 'Designated person' means a person having power under the laws in force in a country of origin to examine food and to certify as to its fitness for human consumption: reg 12(1).

UPDATE

312-315 Imported Meat and Meat Products

SI 1984/1918 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(iv) Imported Food/B. IMPORTED MEAT AND MEAT PRODUCTS/315. Enforcement and penalties.

315. Enforcement and penalties.

The authority responsible¹ for the enforcement and execution of the regulations relating to the importation of meat and meat products² is:

- 165 (1) in relation to all fresh meat³ of mammalian origin which is in, or unloaded in (a) a port health district, the port health authority; or (b) elsewhere than in a port health district, the food authority⁴ in whose district⁵ the food is or is unloaded⁶;
- 166 (2) in relation to imported food other than fresh meat of mammalian origin, which is in, or unloaded in, a port health district and (a) which is liable to immediate customs examination, the port health authority; or (b) where the customs examination is deferred until the food reaches a place of destination in England and Wales, the food authority in whose district the place of destination lies⁷;
- 167 (3) in relation to imported food other than fresh meat of mammalian origin which enters the United Kingdom⁸ or is unloaded elsewhere than in a port health district, the food authority in whose district the food is deposited for customs examination⁹; and
- 168 (4) in relation to imported food which enters the United Kingdom or is unloaded in Scotland or Northern Ireland, the food authority in whose district the food is deposited for customs examination¹⁰.

If any person contravenes or fails to comply with any of the provisions of the regulations relating to the import of meat and meat products¹¹, he is guilty of an offence¹².

1 This is subject to the provisions of the Imported Food Regulations 1984, SI 1984/1918, reg 4 (as amended) (see the text and notes 2-10 infra) and to such of the provisions of the Imported Food Regulations 1984, SI 1984/1918 (as amended) as prescribe functions to be exercised by officers of Customs and Excise: reg 4(8). 'Officer of Customs and Excise' includes any person acting under the authority of the Commissioners of Customs and Excise: reg 2. As to officers of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

2 I.e the Imported Food Regulations 1984, SI 1984/1918 (as amended): see PARAS 312-314 ante. As to the application of these regulations see PARA 312 ante.

3 For the meaning of 'fresh meat' see PARA 312 note 2 ante.

4 'Food authority' means: (1) as respects any district or London borough, the council of the district or borough; (2) as respects the City of London, the Common Council; and (3) as respects the Inner Temple and the Middle Temple, the Sub-Treasurer and the Under Treasurer respectively: Imported Food Regulations 1984, SI 1984/1918, reg 2. As to food authorities see PARA 251 et seq ante.

5 'District' means the district of a food authority, and includes the waters of any customs port abutting on any part of the district so far as such waters are not within a port health district: *ibid* reg 2 (definition amended by SI 1990/2486).

6 Imported Food Regulations 1984, SI 1984/1918, reg 4(8)(a) (amended by SI 1990/2486). Where immediately prior to 1 July 1985, the Imported Food Regulations 1968 (revoked) were enforced and executed by a food authority in any part of a port health district, the Imported Food Regulations 1984, SI 1984/1918 (as amended) are to the same extent to be enforced and executed by that authority or by any other authority to whom the functions of the first named authority have been transferred: reg 4(9) (amended by SI 1990/2486).

7 Imported Food Regulations 1984, SI 1984/1918, reg 4(1)(a), (8)(b) (amended by SI 1990/2486).

8 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

9 Imported Food Regulations 1984, SI 1984/1918, reg 4(1)(b)(i), (8)(c) (amended by SI 1990/2486).

10 Imported Food Regulations 1984, SI 1984/1918, reg 4(1)(b)(ii), (8)(d) (amended by SI 1990/2486). Where examination is deferred under Northern Ireland regulations with respect to imported food, and a food authority receives notification that imported food which has not been examined under those regulations has been or is being sent to a place of destination in its district, it then becomes responsible for the execution and enforcement of the Imported Food Regulations 1984, SI 1984/1918 (as amended) in relation to that food: reg 5(1), (3).

11 In the Imported Food Regulations 1984, SI 1984/1918 (as amended): see PARAS 312-314 ante.

12 Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: *ibid* reg 20(1) (amended by SI 1990/2486; and by virtue of the Criminal Justice Act 1988 s 51). As to the statutory maximum see PARA 261 note 23 ante. No prosecution for an offence under the Imported Food Regulations 1984, SI 1984/1918 (as amended) which is triable either summarily or on indictment may be begun after the expiry of three years from the commission of the offence, or one year from its discovery by the prosecutor, whichever is the earlier: reg 20(2) (added by SI 1990/2486). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Imported Food Regulations 1984, SI 1984/1918, reg 2A (added by SI 1990/2486).

UPDATE

312-315 Imported Meat and Meat Products

SI 1984/1918 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(v) Contamination/316. Power to make emergency orders.

(v) Contamination

316. Power to make emergency orders.

The power to issue improvement notices¹, prohibition orders², emergency notices and orders³ and emergency control orders⁴ may all be used to protect against contamination of food in particular cases⁵.

If, in the opinion of a designating authority⁶: (1) there exist or may exist circumstances which are likely to create a hazard to human health through human consumption⁷ of food; and (2) in consequence, food which is, or may be in the future, in an area of land in the United Kingdom⁸, in an area of sea within British fishery limits⁹, or in both or which is or may be in the future derived¹⁰ from anything in such an area is, or may be, or may become, unsuitable for human consumption, that designating authority may make an order designating that area and containing emergency prohibitions¹¹. This is called an 'emergency order'¹². Any person who contravenes an emergency prohibition, or causes or permits any other person to do so, is guilty of an offence¹³.

A designating authority or the Food Standards Agency¹⁴ may consent, either unconditionally or subject to any condition that the authority giving the consent considers appropriate, to the doing in a particular case of any thing prohibited by an emergency order¹⁵. A designating authority or the Agency may give any person such directions as appear to it to be necessary or expedient for the purpose of preventing human consumption of food which it believes, on reasonable grounds, is, or may become, unsuitable for human consumption in consequence of designated circumstances¹⁶, and may do anything which appears to it to be necessary or expedient for that purpose, and such directions may be given and such action may be taken after the emergency order has ceased to be in force¹⁷. Any person who fails to comply with such a direction, or causes or permits any other person to do so, is guilty of an offence¹⁸.

If a designating authority or the Agency does anything¹⁹ in consequence of a failure on the part of any person to comply with such a direction, it may recover from that person any expenses reasonably incurred by it²⁰. Similarly, if a designating authority or the Agency does anything²¹ in consequence of any person causing or permitting another person to fail to comply with such a direction, it may recover from the person who caused or permitted the failure to comply any expenses reasonably incurred by it²².

1 As to improvement notices see PARA 285 ante.

2 As to prohibition notices see PARA 286 ante.

3 As to emergency prohibition notices and orders see PARA 287 ante.

4 As to emergency control orders see PARA 288 ante.

5 See PARAS 285-288 ante.

6 'Designating authority', in relation to England and Wales, means the Secretary of State: Food and Environment Protection Act 1985 s 1(2) (definition substituted by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, art 2, Schedule para 10; and amended by the Food Standards Act 1999 s 40(1), Sch 5 para 6); Food and Environment Protection Act 1985 s 24(1). As to the Secretary of State see PARA 224 ante. In relation to Wales, the functions of the Secretary of State are transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the

National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 'Human consumption' includes use in the preparation of food for human consumption: Food and Environment Protection Act 1985 s 24(1). For the meaning of 'food' see PARA 201 ante; definition applied by s 24(1).

8 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

9 'Sea' includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river: Food and Environment Protection Act 1985 s 24(1). For these purposes, 'British fishery limits' has the same meaning as in the Fishery Limits Act 1976 (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 961): Food and Environment Protection Act 1985 s 24(1).

10 Food derived from any creature is to be treated as also derived from any feeding stuff which that creature has eaten and from anything from which any such feeding stuff was derived, and references to anything from which food could be derived are to be construed accordingly: *ibid* s 1(3). 'Creature' means any living organism other than a human being or a plant: s 24(1). 'Plant' means any form of vegetable matter, while it is growing and after it has been harvested, gathered, felled or picked, and in particular, but without prejudice to the generality of this definition, includes: (1) agricultural crops; (2) trees and bushes grown for purposes other than those of agriculture; (3) wild plants; and (4) fungi: s 24(1).

11 *Ibid* s 1(1) (amended by the Food Safety Act 1990 ss 51(2)(a)). 'Emergency prohibitions' means the prohibitions specified in *ibid* s 1, Sch 1 (as amended): ss 1(2), 24(1), Sch 1 (amended by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10). A designating authority may by order amend this list: Food and Environment Protection Act 1985 s 1(4). No such order may be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament: s 1(11). As to the application of Pt I (ss 1-4) (as amended) to the Crown see s 20.

An emergency order may prohibit:

- 16 (1) any of the following in the designated area: (a) agricultural activities; (b) the gathering or picking of wild plants; (c) the slaughter of creatures; (d) fishing for and taking fish; and (e) the preparation and processing for supply to purchasers or others of food and anything from which food could be derived (Sch 1 Pt I para 1);
- 17 (2) the movement of food or anything from which food could be derived into or out of the designated area, or from one place to another within that area (Sch 1 Pt II para 2);
- 18 (3) the use of anything taken from the designated area after a time specified in the order in the preparation or processing for supply to purchasers or others of food or anything from which food could be derived (Sch 1 Pt III para 3(a) (Sch 1 Pt III para 3 amended by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10(1), (12)));
- 19 (4) the landing of fish or other forms of aquatic produce which were taken from waters in the designated area after a time so specified (Food and Environment Protection Act 1985 Sch 1 Pt III para 3(b) (as so amended));
- 20 (5) the slaughter of creatures that were in the designated area after a time so specified (Sch 1 Pt III para 3(c) (as so amended));
- 21 (6) the supply, or the possessing for supply, to purchasers or others of any food, or anything from which food could be derived, which was in the designated area after a time so specified (Sch 1 Pt III para 3(d) (as so amended));
- 22 (7) the feeding to creatures of any feeding stuff that was prepared or processed in contravention of a prohibition under head 1(e) above, that was taken from the designated area after a time specified in the order, or in the preparation or processing of which anything was used in contravention of a prohibition under head (3) *supra* (Sch 1 Pt III para 3(e) (as so amended));
- 23 (8) the supply, or the possessing for supply, to purchasers or others of any food or anything from which food could be derived that was prepared or processed in contravention of a prohibition under head (7) above, or in the preparation or processing of which anything was used in contravention of a prohibition under head (3) *supra* (Sch 1 Pt III para 3(f) (as so amended)).

A prohibition of a kind specified in heads (3)-(8) *supra* applies in every part of the United Kingdom and United Kingdom waters: Sch 1 Pt III para 4 (added by SI 1999/1756).

12 'Emergency order' means an order under the Food and Environment Protection Act 1985 s 1 (as amended) which designates an area or which amends or re-enacts an order which designated an area: ss 1(2), 24(1). Such orders being of local application are not noted in this work.

Arrangements may be made between the Secretary of State and the Food Standards Agency authorising the Agency to exercise on behalf of the Secretary of State the power to make orders under s 1(1) (as amended): Food Standards Act 1999 s 17(1)(a). As to the establishment of the Food Standards Agency see PARA 225 ante.

An emergency order must refer to the circumstances or suspected circumstances in consequence of which in the opinion of the designating authority making it, food such as is mentioned in head (2) in the text is, or may be, or may become, unsuitable for human consumption: Food and Environment Protection Act 1985 s 1(5) (substituted by the Food Safety Act 1990 s 51(2)(c)). An emergency order must be laid before Parliament and ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of each House of Parliament, but without prejudice to anything previously done or to the making of a new order: Food and Environment Protection Act 1985 s 1(8). In reckoning any period of 28 days, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 1(9). An order which wholly or partly revokes an emergency order, and does nothing else, or nothing else except make provision incidental or supplementary to the revocation, must be laid before Parliament after being made: s 1(10).

13 Ibid s 1(6), which is expressed to be subject to ss 1(7), 2(2). Any person guilty of such an offence, is liable on summary conviction, to a fine of an amount not exceeding the statutory maximum, or on conviction on indictment, to a fine or to imprisonment for a term of not more than two years or to both: s 21(1). As to the statutory maximum see PARA 261 ante.

It is a defence for a person charged: (1) with contravening an emergency prohibition contained in an emergency order by virtue of Sch 1 paras 2 or 3 (as amended) (see notes 11-12 supra); or (2) with causing or permitting any other person to contravene such a prohibition, to show that the contravention took place on a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure, and that nothing to which the prohibition related was landed from it in the United Kingdom: s 1(7). 'Marine structure' means a platform or other man-made structure at sea, other than a pipeline: s 24(1). For these purposes 'vessel' has the meaning assigned to ship by the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 855): Food and Environment Protection Act 1985 s 24(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 75).

It is also defence for a person charged with such an offence to show that consent had been given under the Food and Environment Protection Act 1985 s 2(1) (as amended) (see the text to note 15 infra) to the contravention of the emergency prohibition, and that any condition subject to which that consent was given was complied with: s 2(2). As to the general defence of due diligence see s 22.

14 As to the establishment of the Food Standards Agency see PARA 225 ante.

15 Ibid s 2(1) (amended by the Food Standards Act 1999 Sch 5 para 6; and the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10).

16 'Designated circumstances' means the circumstances or suspected circumstances to which an emergency order refers in pursuance of the Food and Environment Protection Act 1985 s 1(5): ss 1(5), 24(1).

17 Ibid s 2(3) (amended by the Food Safety Act 1990 s 51(2)(d); the Food Standards Act 1999 Sch 5 para 6; and the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10).

18 Ibid s 2(4). Any person guilty of such an offence is liable on summary conviction, to a fine of an amount not exceeding the statutory maximum, or on conviction on indictment, to a fine or to imprisonment for a term of not more than two years or to both: s 21(1).

19 Ie by virtue of ibid s 2 (as amended): see note 18 infra.

20 Ibid s 2(5) (amended by the Food Standards Act 1999 Sch 5 para 6; and the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10).

21 See note 17 supra.

22 Food and Environment Protection Act 1985 s 2(6) (amended by the Food Standards Act 1999 Sch 5 para 6; and the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, Schedule para 10).

UPDATE

316-318 Power to make emergency orders ... Powers of officers in relation to the exercising of their functions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

316 Power to make emergency orders

NOTE 6--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(v) Contamination/317. Investigation and enforcement.

317. Investigation and enforcement.

A designating authority¹ may authorise²: (1) investigating officers to conduct investigations for the purposes of determining whether any of the powers under the Food and Environment Protection Act 1985³ should be exercised, and the manner in which any such power should be exercised⁴; and (2) enforcement officers to enforce emergency orders⁵ and directions⁶.

An investigating officer may enter⁷ any land, vehicle, vessel, aircraft, hovercraft or marine structure⁸: (a) if he has reasonable grounds to suspect that food⁹ which is on or in it or which is so derived, is, or may be, or may become, unsuitable for human consumption¹⁰ in consequence of such circumstances as the designating authority believe are likely to create a hazard to human health¹¹; or (b) if he has reasonable grounds to suspect that there is present on or in it any food which has been in a designated area¹² at any time before or after the making of the emergency order that designated the area, and which is, or may become, so affected by the designated circumstances¹³ as to be unsuitable for human consumption¹⁴; or (c) if he has reasonable grounds to suspect that there is present on or in it anything from which food could be derived which has been in a designated area at any such time, and which is, or may be, or may become, so affected by the designated circumstances as to cause any food derived from it to be unsuitable for human consumption¹⁵.

An enforcement officer may enter any land, vehicle, vessel, aircraft, hovercraft or marine structure¹⁶: (i) if a direction¹⁷ has been given in relation to it or in relation to anything that he has reasonable grounds to suspect to be present on or in it¹⁸; or (ii) if he has reasonable grounds to suspect that there is present on or in it any document, book or other record that may assist him in ascertaining the whereabouts of anything in relation to which such a direction has been given¹⁹; or (iii) if he has reasonable grounds to suspect that it is for any other reason necessary for him to enter it for the purpose of performing his functions²⁰.

An investigating officer or an enforcement officer may also seize things for the purpose of performing his functions²¹.

While an emergency order is in force an investigating officer or an enforcement officer may enter: (A) any land, vehicle, vessel, aircraft, hovercraft or marine structure in the designated area; and (B) any land, vehicle, vessel, aircraft, hovercraft or marine structure not in that area, but on, or in, which he has reasonable grounds to suspect that there is present any food, or anything from which food could be derived, which has been in that area at any time either before or after the making of the emergency order, or any document, book or other record that may assist him in ascertaining the whereabouts of such food or derivation²².

1 For the meaning of 'designating authority' see PARA 316 note 6 ante.

2 Food and Environment Protection Act 1985 s 3(1) (amended by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, art 2, Schedule para 10).

3 Ie the powers conferred under the Food and Environment Protection Act 1985 ss 1, 2 (both as amended): see PARA 316 ante.

4 Ibid s 3(1)(a).

5 As to emergency orders see PARA 287 post.

6 Food and Environment Protection Act 1985 s 3(1)(b). As to directions see s 2 (as amended); and PARA 316 ante. A designating authority may authorise an investigating officer or an enforcement officer who is not an officer of his department to perform any of the designating authority's functions under Pt I (ss 1-4) (as amended) which he could perform if he were an officer of the department, and an officer performing such functions in pursuance of such an authorisation is to be treated in relation to their performance as if he were an officer of the department: s 3(2). An authorisation under s 3(1) (as amended) or s 3(2) may be given subject to such limitations as may be specified in the instrument containing it, and the Food and Environment Protection Act 1985 is to be construed, in reference to a person whose authorisation has been given subject to limitations, as subject to those limitations: s 3(3). The functions of an investigating officer and of an enforcement officer may also be performed by a British sea-fishery officer: s 3(4). 'British sea-fishery officer' means any person who by virtue of the Sea Fisheries Act 1968 s 7 (as amended) (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 963) is a British sea-fishery officer for the purposes of the Sea Fisheries Acts: Food and Environment Protection Act 1985 s 24(1).

7 An investigating officer or an enforcement officer may exercise any powers conferred on him for the purposes of ibid Pt I (as amended): (1) in relation to a British vessel, British aircraft, British hovercraft or British marine structure, wherever it may be; (2) in relation to a foreign fishing boat, only if it is within British fishery limits; and (3) in relation to a foreign vessel other than a fishing boat, or to a foreign aircraft, foreign hovercraft or foreign machine structure, only if (a) it is in the United Kingdom or United Kingdom waters; and (b) the officer has reasonable grounds to suspect that something to which an emergency prohibition contained in an emergency order by virtue of Sch 1 paras 2 or 3 (as amended) relates has been or is being landed from it in the United Kingdom: s 4(5). 'British vessel' means a vessel registered in the United Kingdom, or a vessel exempted from such registration under the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 855): Food and Environment Protection Act 1985 s 24(1). 'British aircraft' means an aircraft registered in the United Kingdom: s 24(1). 'British hovercraft' means a hovercraft registered in the United Kingdom: s 24(1). 'British marine structure' means a marine structure owned by or leased to an individual residing in or a body corporate incorporated under the law of any part of the United Kingdom: s 24(1). 'Fishing boat' means any vessel for the time being employed in fishing operations or any ancillary operations: s 24(1). For the meaning of 'United Kingdom' see PARA 206 note 2 ante. 'United Kingdom waters' means any part of the sea within the seaward limits of United Kingdom territorial waters: s 24(1).

8 Ibid s 4(1). As to powers of investigating and enforcement officers to enter into dwellings, powers in relation to vessels, aircraft etc and power to use reasonable force see ibid s 4(6), Sch 2. An officer must produce a certificate of authority if so requested, and has no power to enter a dwelling house without a magistrates' search warrant: Sch 2.

9 For the meaning of 'food' see PARA 201 ante; definition applied by ibid s 24(1).

10 For the meaning of 'human consumption' see PARA 316 note 7 ante.

11 Food and Environment Protection Act 1985 s 4(1)(a) (s 4(1) amended by the Food Safety Act 1990 s 51(2)). The circumstances mentioned in the text are those under the Food and Environment Protection Act 1985 s 1(1) (as amended): see PARA 316 ante.

12 'Designated area' means an area designated by an emergency order: ibid ss 1(2), 24(1).

13 For the meaning of 'designated circumstances' see PARA 316 note 16 ante.

14 Food and Environment Protection Act 1985 s 4(1)(b) (as amended: see note 11 supra).

15 Ibid s 4(1)(c) (as amended: see note 11 supra).

16 Ibid s 4(2).

17 Ie under ibid s 2 (as amended): see PARA 316 ante.

18 Ibid s 4(2)(a).

19 Ibid s 4(2)(b).

20 Ibid s 4(2)(c).

21 Ibid s 4(3).

22 Ibid s 4(4).

UPDATE

316-318 Power to make emergency orders ... Powers of officers in relation to the exercising of their functions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

317 Investigation and enforcement

NOTE 7--Definition of 'United Kingdom waters' in Food and Environment Protection Act 1985 s 24(1) repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 2 (not yet in force).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(v) Contamination/318. Powers of officers in relation to the exercising of their functions.

318. Powers of officers in relation to the exercising of their functions.

An officer¹ may take with him, to assist him in performing his functions any other person, and any equipment or materials². A person whom an officer takes with him to assist him may perform any of the officer's functions, but only under the officer's supervision³.

In order to perform functions under Part I or Part II of the Food and Environment Protection Act 1985 an officer may require any person to give details of any substances or articles on board a vessel, aircraft, hovercraft or marine structure, and to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure⁴. In order to perform any such functions an officer may require any vessel, aircraft, hovercraft or marine structure to stop, and may require the attendance: (1) of the master, captain or commander of a vessel, aircraft or hovercraft; (2) of the person in charge of a marine structure; and (3) of any other person who is on board a vessel, aircraft, hovercraft or marine structure, and may require any person on board to assist him in the performance of his functions⁵. In order to perform functions under Part I or Part II of the Food and Environment Protection Act 1985 an officer may require the master, captain or commander of a vessel, aircraft or hovercraft, and the person in charge of a marine structure, to take it and its crew to the port which appears to the officer to be the nearest convenient port, or may take it there himself⁶. In order to perform any such functions an officer may detain a vessel, aircraft, hovercraft or marine structure⁷. If an officer detains a vessel, aircraft, hovercraft or marine structure, he must serve on the master, captain, commander or person in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an officer⁸.

Without prejudice to his powers under any other provision of the Food and Environment Protection Act 1985, in order to perform his functions an officer: (a) may open any container; (b) may carry out searches, inspections, measurements and tests; (c) may take samples; (d) may require the production of documents, books and records; and (e) may photograph or copy anything whose production he has power to require under head (d) above⁹. An officer exercising any power of entry conferred by Part III of the Food and Environment Protection Act 1985 may photograph anything which he has reasonable cause to believe may be relevant in connection with the exercise of his functions under that Part¹⁰.

An officer must be furnished with a certificate of his authorisation, and when he proposes to perform any function under the Food and Environment Protection Act 1985, it is his duty, if so requested, to produce that certificate¹¹. It is also his duty, if so requested, to state his name, the function that he proposes to perform, and his grounds for proposing to perform it¹².

An officer must perform his functions under the Food and Environment Protection Act 1985 at a reasonable hour unless it appears to the officer that there are grounds for suspecting that the purpose of their performance may be frustrated if he seeks to perform them at a reasonable hour¹³.

An officer may only enter a dwelling for the purpose of performing his functions under the Food and Environment Protection Act 1985 if a justice¹⁴ has issued a warrant authorising him to enter and search that dwelling¹⁵. A justice may only issue such a warrant if on an application made by the officer he is satisfied that the officer has reasonable grounds for believing that there is present in the dwelling anything to which those functions relate, and that: (i) it is not practicable to communicate with any person entitled to grant entry to the dwelling; or (ii) a person entitled to grant entry to the dwelling has unreasonably refused an officer entry; or (iii)

entry to the dwelling is unlikely to be granted unless a warrant is produced; or (iv) the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it¹⁶.

An officer may use reasonable force, if necessary, in the performance of his functions¹⁷. An officer is not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under the Food and Environment Protection Act 1985 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it¹⁸.

Any person who: (A) intentionally obstructs an officer in the performance of any of his functions under the Food and Environment Protection Act 1985; (B) fails without reasonable excuse to comply with a requirement made or direction given by an officer in the performance of his functions under the Food and Environment Protection Act 1985; or (C) in purporting to give information required by an officer for the performance of any of his functions under the Food and Environment Protection Act 1985, makes a statement which he knows to be false in a material particular, recklessly makes a statement which is false in a material particular, or intentionally fails to disclose any material particular, is guilty of an offence¹⁹.

1 For the purposes of the Food and Environment Protection Act 1985 s 4, Sch 2, 'officer' means an investigating officer, an enforcement officer, and a person authorised to enforce Pt II (ss 5-15) (as amended) (see SHIPPING AND MARITIME LAW) or Pt III (ss 16-19) (see AGRICULTURAL PRODUCTION AND MARKETING VOL 1 (2008) PARAS 1036-1037, 1054-1057) (as amended) of the Food and Environment Protection Act 1985: Sch 2 para 1. If an officer is carrying out functions conferred by Pt III, he may require a person whom he has reasonable cause to believe is able to give information which will assist him in carrying out those functions to answer such questions as the officer thinks it appropriate to ask, and to sign a declaration of the truth of his answers: Sch 2 para 2A(1) (Sch 2 para 2A added by the Pesticides Act 1998 s 2(2)). Any person to whom questions are put under the Food and Environment Protection Act 1985 Sch 2 para 2A may nominate a person to be with him when he gives his answers: Sch 2 para 2A(2) (as so added). When a person answers any such questions the only other persons who may be present (apart from the questioner) are the person (if any) nominated under Sch 2 para 2A(2), and any person authorised by the officer to be present: Sch 2 para 2A(3). A person is not to be excused from complying with a requirement under Sch 2 para 2A(1) on the ground that to do so might incriminate him or his spouse of an offence, but a statement or admission made in complying is not admissible in evidence against either of them in proceedings for any offence: Sch 2 para 2A(4).

2 Ibid Sch 2 para 2(1).

3 Ibid Sch 2 para 2(2).

4 Ibid Sch 2 para 3(1).

5 Ibid Sch 2 para 3(2).

6 Ibid Sch 2 para 3(3) (amended by the Environmental Protection Act 1990 s 146(8)).

7 Food and Environment Protection Act 1985 Sch 2 para 3(4).

8 Ibid Sch 2 para 3(5).

9 Ibid Sch 2 para 4(1).

10 Ibid Sch 2 para 4(2) (added by the Pesticides Act 1998 s 2(3)). Nothing in the Food and Environment Protection Act 1985 Sch 2 para 4(2) affects the powers conferred by Sch 2 para 4(1): Sch 2 para 4(3) (added by the Pesticides Act 1998 s 2(3)).

11 Food and Environment Protection Act 1985 Sch 2 para 5(1). The references to certificates of authorisation in Sch 2 para 5(1) are to be construed, in relation to a British sea-fishery officer, as references to his warrant of appointment as a British sea-fishery officer: Sch 2 para 5(3).

12 Ibid Sch 2 para 5(2).

13 Ibid Sch 2 para 6.

14 For the purposes of *ibid* Sch 2 para 7, 'justice' means, in relation to England and Wales and Northern Ireland, a justice of the peace: Sch 2 para 7(3).

15 *Ibid* Sch 2 para 7(1). In relation to England and Wales, the Police and Criminal Evidence Act 1984 s 15, s 16 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 872, 880) (which relate to safeguards in respect of warrants and the execution of warrants) and, in relation to Northern Ireland, the Police and Criminal Evidence (Northern Ireland) Order 1989, SI 1989/1341 (NI 12), arts 17, 18 (which makes provision corresponding to those sections) has effect in relation to warrants for officers under the Food and Environment Protection Act 1985 Sch 2 para 7 as they have effect in relation to warrants for constables: Sch 2 para 7(4).

16 *Ibid* Sch 2 para 7(2).

17 *Ibid* Sch 2 para 8.

18 *Ibid* Sch 2 para 9.

19 *Ibid* Sch 2 para 10.

UPDATE

316-318 Power to make emergency orders ... Powers of officers in relation to the exercising of their functions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

318 Powers of officers in relation to the exercising of their functions

NOTE 1--In 1985 Act Sch 2 para 2A(4) after 'spouse' add 'or civil partner': Civil Partnership Act 2004 Sch 27 para 109.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(v) Contamination/319. Prevention from contamination.

319. Prevention from contamination.

Regulations are in force that seek to prevent the contamination of food. These regulations include provision for: (1) the contamination of food by chemicals¹; (2) materials and articles in contact with food²; (3) the presence of metals in food³; (4) the control of pesticides⁴; and (5) veterinary residues⁵.

1 See the Arsenic in Food Regulations 1959, SI 1959/831 (amended by SI 1960/2261; and SI 1973/1052); and the Contaminants in Food Regulations 1997, SI 1997/1499 (as amended) (amended by the Contaminants in Food (Amendment) Regulations 1999, SI 1999/1603). The Contaminants in Food Regulations 1997, SI 1997/1499 (as amended) create an offence of placing on the market food which contains a level of contaminants higher than permitted by EC Commission Regulation 194/97 (OJ L31, 1.2.97, p 48) setting maximum levels for certain contaminants in foodstuffs (as amended). This Regulation currently regulates spinach and lettuce, but it is anticipated that further foods may be added.

See also the Erucic Acid in Food Regulations 1977, SI 1977/691 (amended by SI 1982/264); the Mineral Hydrocarbons in Food Regulations 1966, SI 1966/1073 (amended by SI 1982/1727; SI 1985/67; SI 1990/2486; SI 1991/1476; SI 1992/2597; SI 1995/3187); and the Chloroform in Food Regulations 1980, SI 1980/36 (amended by SI 1982/1727; SI 1985/67; SI 1990/2486; SI 1991/1476).

2 See the Materials and Articles in Contact with Food Regulations 1987, SI 1987/1523 (amended by SI 1994/979); the Plastic Materials and Articles in Contact with Food Regulations 1998, SI 1998/1376; and the N-nitrosamines and N-nitrosatable Substances in Elastomer or Rubber Teats and Dummies (Safety) Regulations 1995, SI 1995/1012.

3 See the Lead in Food Regulations 1979, SI 1979/1254 (amended by SI 1985/912); and the Tin in Food Regulations 1992, SI 1992/496 (amended by SI 1992/2596).

4 See the Control of Pesticides (Advisory Committee on Pesticides) Order 1985, SI 1985/1516 (amended by SI 1999/1747); the Control of Pesticides (Advisory Committee on Pesticides) (Terms of Office) Regulations 1985, SI 1985/1517 (amended by SI 1999/1747) (which set up the Advisory Committee on Pesticides); the Control of Pesticides Regulations 1986, SI 1986/1510 (amended by SI 1997/188); and the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) Regulations 1999, SI 1999/3483.

5 See the Animals and Animal Products (Examinations for Residues and Maximum Residue Limits) Regulations 1997, SI 1997/1729; and EC Regulation 2377/90 (OJ L224, 18.8.90, p 1) (as amended).

UPDATE

319 Prevention from contamination

NOTE 1--SI 1959/831, SI 1977/691, SI 1980/36 further amended: SI 2005/2626 (England), SI 2005/3254 (Wales). SI 1966/1073 further amended: SI 2005/2626, SI 2009/3238 (England), SI 2005/3254, SI 2009/3378 (Wales). SI 1997/1499 now replaced: Contaminants in Food (England) Regulations 2009, SI 2009/1223; Contaminants in Food (Wales) Regulations 2009, SI 2009/1386 (amended by SI 2009/2939). It is an offence to contravene or fail to comply with EC Commission Regulation 1831/2006 art 1(1) (prohibition on the placing of foodstuffs containing contaminants in excess of prescribed limits), art 3 (prohibitions on use, mixing and detoxification), and EC Commission Regulation 124/2009 art 1(1) (prohibition on marketing or mixing foods containing coccidiostats or histomonstats at levels in excess of prescribed limits): SI 2009/1223 reg 3 (England); SI 2009/1386 reg 3 (Wales).

NOTE 2--SI 1987/1523 now replaced: Materials and Articles in Contact with Food (England) Regulations 2007, SI 2007/2790 (amended by SI 2009/2938); Materials and Articles in Contact with Food (Wales) Regulations 2007, SI 2007/3252 (amended by SI 2008/1682, SI 2009/481, SI 2009/3105). SI 1998/1376 replaced: Plastic Materials and Articles in Contact with Food (England) Regulations 2009, SI 2009/205; Plastic Materials and Articles in Contact with Food (Wales) Regulations 2009, SI 2009/481. See also Plastic Materials and Articles in Contact with Food (Lid Gaskets) (England) Regulations 2007, SI 2007/2786 (amended by SI 2008/1642); Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Wales) Regulations 2008, SI 2008/56.

NOTE 3--SI 1979/1254 revoked: SI 2002/890 (England); SI 2002/1886 (Wales). SI 1992/496 revoked: SI 2004/3062 (England); SI 2005/364 (Wales). See Ceramic Articles in Contact with Food (England) Regulations 2006, SI 2006/1179; Ceramic Articles in Contact with Food (Wales) Regulations 2006, SI 2006/1704, and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 615.

NOTE 4--SI 1999/3483 now replaced: Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008, SI 2008/2570.

NOTE 5--SI 1997/1729 further amended: SI 2001/3590, SI 2004/147, SI 2005/2626 (England), SI 2005/3254 (Wales), SI 2006/755, SI 2009/1925. Regulation 2377/90 replaced: European Parliament and EC Council Regulation 470/2009 (OJ L152, 16.6.2009, p 11).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(vi) Irradiation/320. Restrictions on irradiation.

(vi) Irradiation

320. Restrictions on irradiation.

It is illegal to irradiate food except where sanctioned by the Food (Control of Irradiation) Regulations 1990¹. No person may, in the preparation² of any food³ for sale⁴, subject it or any part of it to treatment by ionising radiation⁵ unless⁶: (1) he holds a current irradiation licence⁷; (2) the food so subjected is food which he is authorised by that irradiation licence to subject to that treatment⁸; and (3) that treatment is carried out in accordance with conditions of that irradiation licence⁹. A licence will be granted only for food falling within one of the seven permitted descriptions of food¹⁰. Each person who in the preparation of food for sale subjects it or any part of it to treatment by ionising radiation must, on the expiry of his irradiation licence, retain such records relating to that food as he is required by the licence to keep throughout its currency until five years have passed from the date of that treatment¹¹.

No person may import into Great Britain¹² for the purpose of sale any food which has been subjected to treatment by ionising radiation unless that food is properly irradiated food¹³, is of a recognised appropriate origin¹⁴ and is accompanied by appropriate documentation¹⁵. This applies to food which has (as well as food which has not) become an ingredient of other food before importation¹⁶.

No person may store or transport for the purposes of sale any food which has been subjected to treatment by ionising radiation unless either he is the holder of the irradiation licence relating to that food or that food is stored or, as the case may be, transported in accordance with certain requirements¹⁷. This applies to food which (as well as food which has not) become an ingredient of other food before storage or, as the case may be, transportation¹⁸.

No person may sell any food which, or any part of which, has been subjected to treatment by ionising radiation unless: (a) either (i) that treatment took place in Great Britain in accordance with the prohibition on treatment without a licence¹⁹ and all requirements of the irradiation licence relating to that food have been observed, or (ii) that food was imported in circumstances in which compliance with the restriction on importation²⁰ was observed; and (b) any storage or transportation of that food was carried out in circumstances in which compliance with the restriction on storage²¹ was observed²².

The European Directive of the European Parliament and the Council of 22 February 1999 on the approximation of the laws of the member states concerning food and food ingredients treated with ionising radiation²³, and the European Directive of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation²⁴ are required to be implemented in the United Kingdom by 20 September 2000, which may necessitate amendments to the law of irradiation²⁵.

¹ See the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended): and PARAS 321-324 post.

The Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumptions that food is intended for human consumption) (see PARA 282 ante), s 20 (offences due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (documentary evidence) (see PARA 269 ante), s 33 (obstruction of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44

(protection of officers acting in good faith) (see PARA 272 ante), apply for the purposes of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), as they apply for the purposes of the Food Safety Act 1990 s 8 (selling food not complying with food safety requirements) (see PARA 283 ante), s 14 (selling food not of the nature or substance or quality demanded) (see PARA 360 post) or s 15 (falsely describing or presenting food) (see PARA 372 post), and unless the context otherwise requires, any reference in them to the Food Safety Act 1990 is to be construed, for the purposes of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), as a reference to those regulations: see reg 10(1).

The Food Safety Act 1990 s 8(3) (which makes presumptions in the case of batches etc of food) (see PARA 283 ante) applies to food which it is an offence to sell under the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), as it applies to food which fails to comply with food safety requirements: reg 10(2). The Food Safety Act 1990 s 9 (inspection and seizure of suspected food) (see PARA 284 ante) applies for the purposes of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), as if food which it were an offence to sell under them were food which failed to comply with food safety requirements: reg 10(3). The Food Safety Act 1990 s 34 (which relates to time limits for the beginning of prosecutions) (see PARA 459 post) applies in relation to offences under the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), as it applies to offences punishable under the Food Safety Act 1990 s 35(2) (see PARA 468 post): Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 10(4).

2 For the meaning of 'preparation' see PARA 201 note 3 ante.

3 References to food are to be construed as references to food intended for sale for human consumption: Food Safety Act 1990 s 16(5)(a); definition applied by the Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 2(1).

4 'Sell' includes possess, offer, expose and advertise for sale, and sale is to be construed accordingly: *ibid* reg 2(1).

5 'Ionising radiation' means any gamma rays, X-rays or corpuscular radiations which are capable of producing ions either directly or indirectly other than: (1) those rays or corpuscular radiations (a) which are emitted by measuring or inspection devices; (b) which are emitted at an energy level no higher than the appropriate maximum level; and (c) the dose of energy imparted by which does not exceed 0.5 Gy; and (2) those rays or corpuscular radiations applied in respect of food prepared under medical supervision for patients requiring sterile diets: *ibid* reg 2(1). For these purposes, the appropriate maximum level is 10 MeV in the case of X-rays and 5 MeV otherwise: reg 2(1).

6 *Ibid* reg 3(1).

7 *Ibid* reg 3(1)(a). 'Irradiation licence' means a licence to subject food of a particular description to treatment by ionising radiation: reg 2(1). As to irradiation licences see PARA 321 post.

8 *Ibid* reg 3(1)(b).

9 *Ibid* reg 3(1)(c).

10 See PARA 321 note 19 post. For the seven permitted descriptions of food see note 13 *infra*.

11 Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 3(2).

12 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

13 'Properly irradiated food' means food: (1) which falls within one of the seven permitted descriptions of food (as to which see *infra*); (2) which, when subjected to treatment by ionising radiation, either was so subjected alone or was so subjected as part of a batch each item of food comprised in which was food which fell within the same permitted description of food; and (3) which has not been over-irradiated (as to which see *infra*); and 'proper irradiation' is to be construed accordingly: Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 2(2)(a).

Food falls within one of the seven permitted descriptions of food when (excluding the weight of any add water) no less than 98% of it by weight falls within that description; and 'item', in relation to a batch of food, means each item within that batch intended to be capable of being sold individually: reg 2(2)(b).

The seven permitted descriptions of food are: (a) fruit; (b) vegetables; (c) cereals; (d) bulbs and tubers; (e) spices and condiments; (f) fish and shellfish; and (g) poultry: reg 2(2)(c). 'Fruit' includes fungi, tomatoes and rhubarb: reg 2(2)(d)(i). 'Vegetables' excludes fruit, cereals, bulbs and tubers and spices and condiments but includes pulses: reg 2(2)(d)(ii). For these purposes, 'cereals' has the same meaning as in the Intervention Functions (Delegation) Regulations 1972, SI 1972/1679 (as amended): Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 2(2)(d)(iii). 'Bulbs and tubers' means potatoes, yams, onions, shallots and garlic: reg 2(2)(d)(iv). 'Spices and condiments' means dried substances normally used for seasoning: reg 2(2)(d)(v). 'Fish

and shellfish' includes eels, crustaceans and molluscs: reg 2(2)(d)(vi). 'Poultry' means domestic fowls, geese, ducks, guinea fowls, pigeons, quails and turkeys: reg 2(2)(d)(vii).

Food has been over-irradiated when the overall average dose of ionising radiation absorbed by it, measured by the approved method of measurement, exceeds, in the case of food falling within the permitted description of fruit, 2 kGy, vegetables, 1 kGy, cereals, 1 kGy, bulbs and tubers, 0.2 kGy, spices and condiments, 10 kGy, fish and shellfish, 3 kGy, or poultry, 7 kGy, or when the maximum dose of ionising radiation absorbed by it, or by any food in a batch of which it forms part, is, when so measured, a dose of kGy higher than the lower of $3x$ and $1.5y$ where x is the minimum dose of kGy so absorbed when so measured and y is the overall average dose of kGy specified in reg 2(2) relating to that permitted description: reg 2(2)(e).

The approved method of measurement relating to food subjected to treatment by ionising radiation is the method of measuring doses of ionising radiation required by the irradiation licence or, as the case may be, official authorisation under which that food has been subjected to that treatment: reg 2(2)(f). 'Official authorisation' means authorisation granted by a competent authority in a member state of the European Economic Community other than the United Kingdom to subject food of a particular description to treatment by ionising radiation in a particular plant: reg 2(1). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

14 Recognition of appropriate origin for the purpose of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), is effected by publication by the Food Standards Agency of notice in the London and Edinburgh Gazettes declaring that an origin is an appropriate origin for the purposes of the regulations: reg 4(2), Sch 2 para 1(1) (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante. 'Origin' means (1) in relation to a member state other than the United Kingdom, an origin in a plant therein specified in the notice; and (2) in relation to any other country outside the United Kingdom specified in the notice, an origin in that country; and 'country' includes territory: Sch 2 para 1(2).

Recognition of appropriate origin may only be effected by the Agency in respect of any plant if it is satisfied: (a) that there is in effect an official authorisation which applies to that plant; (b) that that official authorisation includes provision for an approved method of measurement relating to food to which the official authorisation relates; and (c) that the terms of that official authorisation, as combined with the operation of the legislation in force in the country in which that plant is situated relating to the subjection thereof of food to treatment by ionising radiation, protects human health in relation to food subjected to treatment by ionising radiation in that plant to an extent not less than human health is protected by the operation of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), in relation to food of a similar description when subjected in Great Britain to such treatment: Sch 2 para 2(1) (amended by SI 2000/656).

Recognition of appropriate origin may not be effected by the Agency in respect of any country unless it is satisfied: (i) that in that country food which is subjected to treatment by ionising radiation may only be so subjected if the person who subjects it has a current irradiation licence granted, under a reference by which that licence can be identified, by a competent authority in that country; (ii) that any irradiation licence granted in that country includes provision for an approved method of measurement relating to food to which the licence relates; and (iii) that the operation of the legislation in force in that country relating to the subjection thereof of food to treatment by ionising radiation protects human health to an extent not less than human health is protected by operation of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended): Sch 2 para 2(2) (amended by SI 2000/656).

If the Agency ceases to be so satisfied in relation to a plant or a country, it may publish in the London and Edinburgh Gazettes notice that that origin is no longer an appropriate origin for the purposes of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended): Sch 2 para 2(3) (amended by SI 2000/656).

15 Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 4(1). Appropriate documentation for food for the purposes of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended), is a statement to the effect that the food has been subjected to treatment by ionising radiation together with: (1) in relation to food from an origin within a member state other than the United Kingdom, a copy of all the particulars a copy of which, by virtue of Sch 1 Pt II para 15(a)-(d) (see PARA 321 post), would be required to accompany any food had the official authorisation relating to the plant of that origin been an irradiation licence and had that food been consigned by the holder of an irradiation licence to any other person after subjection by him to treatment by ionising radiation, together with confirmation from the person authorised by virtue of that official authorisation that that official authorisation was in effect in relation to the food at the time at which that treatment took place; and (2) in relation to food from an origin within any other country outside the United Kingdom, a copy of all the particulars a copy of which, by virtue of Sch 1 Pt II para 15(a)-(d), would be required to accompany any food had it been consigned by the holder of an irradiation licence to any other person after subjection by him to treatment by ionising radiation, together with confirmation from the holder of the irradiation licence in the country in which the food was subjected to treatment by ionising radiation that that irradiation licence was in effect in relation to the food at the time at which that treatment took place: Sch 2 para 3.

16 Ibid reg 4(3).

- 17 Ibid reg 5(1). As to the requirements for storage and transportation see reg 5(1), Sch 3.
- 18 Ibid reg 5(2).
- 19 Ie in accordance with ibid reg 3: see the text and notes 6-10 supra.
- 20 Ie compliance with ibid reg 4: see the text and 14-15 supra.
- 21 Ie compliance with ibid reg 5: see the text and 16-17 supra.
- 22 Ibid reg 6.
- 23 Ie EC Council Directive 99/2 (OJ L66, 13.3.99, p 16) on the approximation of the laws of the member states concerning foods and food ingredients treated with ionising radiation.
- 24 Ie EC Council Directive 99/3 (OJ L66, 13.3.99, p 24) on the establishment of a Community list of foods and food ingredients treated with ionising radiation.
- 25 Ie the provisions of the Food (Control of Irradiation) Regulations 1990, SI 1990/2490.

UPDATE

320-324 Irradiation

SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

320-321 Restrictions on irradiation, Irradiation licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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321. Irradiation licences.

Any person who seeks to be granted an irradiation licence¹ must apply for its grant by sending to the licensing authority² the following particulars in writing³:

- 169 (1) his name⁴;
- 170 (2) his address⁵;
- 171 (3) an identification of the premises at which he proposes to subject food⁶ to treatment by ionising radiation⁷;
- 172 (4) details of any licence or registration under other legislation which enables him to use ionising radiation at those premises in circumstances where, but for that licence or registration, that use would be unlawful⁸;
- 173 (5) each description of food which he proposes to subject to treatment by ionising radiation⁹;
- 174 (6) in respect of each description of food specified pursuant to head (5) above:
 - 1 (a) the purpose for which he proposes to subject that description of food to treatment by ionising radiation¹⁰;
 2. (b) whether or not he proposes to use microbiological criteria in deciding whether or not to subject that description of food to treatment by ionising radiation and, where he proposes to use them, the type and frequency of microbiological examination which he proposes is to be used in assisting him to reach that decision and the qualifications of any person who he proposes will undertake that examination¹¹;
 3. (c) the overall average dose, maximum dose and minimum dose of ionising radiation which, subject to head (b) above, he proposes to apply to that description of food¹²;
 4. (d) the method (including instrumentation and frequency) by which he proposes to measure any dose of ionising radiation and the dosimetry standard which he proposes to use to calibrate the dose meters used to measure it¹³;
 5. (e) whether or not he proposes, subject to head (b) above, to subject that description of food to treatment by ionising radiation in packaging in contact with the food and, if so, a specification of the packaging which he proposes to use¹⁴; and
 6. (f) whether or not he proposes, subject to head (b) above, to apply temperature control to that description of food in conjunction with subjecting it to treatment by ionising radiation and, if so, a specification of the temperature at which he proposes to keep the food during the application of that temperature control¹⁵;
- 2 175 (7) a statement of the practices which he proposes to apply, and of the minimum qualifications (whether they are formal or are derived from skill, training or experience) of persons who will be involved in applying those practices, in order to eliminate any significant risk of breach of any condition of an irradiation licence¹⁶;
- 176 (8) the date from which he wishes the irradiation licence to run¹⁷; and
- 177 (9) any other particulars which he wishes the licensing authority to consider in deciding whether to grant an irradiation licence¹⁸.

On receipt of such an application, it is the function of the licensing authority to decide whether to grant or to refuse to grant an irradiation licence to the applicant¹⁹. On completion of that consideration the licensing authority must notify the applicant that it has completed that consideration and notify him of the amount of the application consideration charge, the applicant must, no later than 28 days after that notification, pay the application consideration charge to the licensing authority and, on receipt of that payment, the licensing authority must, if it is satisfied that it is appropriate²⁰, grant an irradiation licence to the applicant²¹.

Irradiation licences must include the following terms and conditions²²:

- 178 (i) the name of the person to whom the licence is granted, an identifying reference number and the date on which it commences²³;
- 179 (ii) the premises to which the licence applies²⁴;
- 180 (iii) a description of the food to which the licence applies²⁵;
- 181 (iv) any conditions directly relating to the licence application²⁶;
- 182 (v) certain free standing conditions relating to food received by the licensee from other persons, the storing of food, the treatment of food, the labelling of food, the recording of treatment, and written returns²⁷;
- 183 (vi) that the licensee will neither contravene nor fail to comply with any provision of the regulations controlling irradiation²⁸; and
- 184 (vii) that the licence is to continue in effect for three years²⁹.

An irradiation licence may be varied³⁰ and in certain circumstances withdrawn, suspended or extended³¹.

The licensing authority is required to publish in the London and Edinburgh Gazettes notice of each irradiation licence granted, each suspension of an irradiation licence, each withdrawal of an irradiation licence, and each agreed variation of the terms of an irradiation licence³².

1 For the meaning of 'irradiation licence' see PARA 320 note 7 ante.

2 'Licensing authority' means: in relation to premises in England and Wales, the Food Standards Agency: Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 2(1) (substituted by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante. As to charges payable under the Food (Control of Irradiation) Regulations 1990, SI 1990/2490, see Sch 1 Pt VI.

3 Ibid reg 3, Sch 1 Pt I para 1.

4 Ibid Sch 1 Pt I para 1(a).

5 Ibid Sch 1 Pt I para 1(b).

6 For the meaning of 'food' see PARA 201 ante; definition applied by ibid reg 2(1).

7 Ibid Sch 1 Pt I para 1(c). For the meaning of 'ionising radiation' see PARA 320 note 5 ante.

8 Ibid Sch 1 Pt I para 1(d).

9 Ibid Sch 1 Pt I para 1(e), which is expressed to be subject to head (6)(b) in the text.

10 Ibid Sch 1 Pt I para 1(f)(i).

11 Ibid Sch 1 Pt I para 1(f)(ii).

12 Ibid Sch 1 Pt I para 1(f)(iii).

13 Ibid Sch 1 Pt I para 1(f)(iv).

14 Ibid Sch 1 Pt I para 1(f)(v).

15 Ibid Sch 1 Pt I para 1(f)(vi).

16 Ibid Sch 1 Pt I para 1(g).

17 Ibid Sch 1 Pt I para 1(h).

18 Ibid Sch 1 Pt I para 1(i).

19 Ibid Sch 1 Pt I para 2. In deciding whether to grant or to refuse an irradiation licence the licensing authority must consider whether it is satisfied: (1) that it is not unlawful (for want of registration, licence or similar authority) for the applicant to subject the proposed food to treatment by ionising radiation; (2) that the food falls within one of the seven permitted descriptions of food (see PARA 320 note 12 ante); (3) that each purpose specified by virtue of head (6)(a) in the text is legitimate and that the applicant proposes to use microbiological criteria in deciding whether to subject food to such treatment; (4) that there is no significant risk that the applicant will subject to treatment by ionising radiation food which is for microbiological purposes incapable of complying with food safety requirements, or is capable of so complying only if treated by ionising radiation; (5) that food will be examined by a person with the qualifications of a food examiner under the Food Safety Act 1990 s 30(9) (as amended) (see PARA 267 ante); (6) that the overall average dose is acceptable; (7) that the method specified by virtue of head (6)(d) in the text eliminates the risk that the dose will deviate from the overall average dose; (8) that there is no significant risk that the food will fail to comply with food safety requirements; and (9) the applicant will eliminate any significant risk that there will be any breach of any condition of the irradiation licence: Food (Control of Irradiation) Regulations 1990, SI 1990/2490, Sch 1 Pt I para 3(1).

20 See note 19 supra.

21 Food (Control of Irradiation) Regulations 1990, SI 1990/2490, Sch 1 Pt I para 3(1). If the licensing authority is not so satisfied it must give to the applicant a written statement of the reasons why it considers that it should not grant the irradiation licence applied for to him and in that statement invite the applicant to make written representations to the licensing authority within a time limit specified in that statement and expiring no earlier than 28 days after the date on which the statement is sent: Sch 1 Pt I para 4(1). If no such representations are received by the licensing authority within the time limit so specified, the licensing authority must notify the applicant in writing that his application is refused but need not include any statement of reasons for the refusal: Sch 1 Pt I para 4(2). If such representations are received, the licensing authority is required to consider them and if those representations satisfy the licensing authority that all of the reasons specified in the written statement no longer apply, and the licensing authority considers that there are no other reasons why it should not grant an irradiation licence, it must grant an irradiation licence to the applicant: Sch 1 Pt I para 4(3)(a). In any other case the licensing authority: (1) if it considers that there are other reasons why it should not grant an irradiation licence, must give to the applicant the statement required by Sch 1 Pt I para 4(1) (whereupon the provisions of Sch 1 Pt I para 4 apply as they apply when the original statement is given); and (2) otherwise must notify the applicant in writing that his application is refused and include in the notification a statement of reasons for the refusal: Sch 1 Pt I para 4(3)(b).

22 See ibid Sch 1 Pt II para 1.

23 See ibid Sch 1 Pt II para 2.

24 See ibid Sch 1 Pt II para 3.

25 See ibid Sch 1 Pt II para 4.

26 See ibid Sch 1 Pt II para 5.

27 See ibid Sch 1 Pt II paras 6-16.

28 See ibid Sch 1 Pt II para 17.

29 See ibid Sch 1 Pt II para 18.

30 See ibid Sch 1 Pt III paras 1, 2.

31 See ibid Sch 1 Pt IV paras 1-5.

32 See ibid Sch 1 Pt V para 1. Any notice so published must specify the name of the licensee or former licensee, the premises to which the notice relates and the reference number and must state in outline the effect of the matter to which it relates: Sch 1 Pt V para 2.

UPDATE

320-324 Irradiation

SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

320-321 Restrictions on irradiation, Irradiation licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(vi) Irradiation/322. Enforcement and functions of the licensing authority.

322. Enforcement and functions of the licensing authority.

The licensing authority¹ has a duty to enforce the provisions of the Food (Control of Irradiation) Regulations 1990 in so far as they fall to be observed by the holder of a current irradiation licence² and (without prejudice to any power conferred on it by the Food Safety Act 1990 or the Food (Control of Irradiation) Regulations 1990) must, so far as is reasonably practicable, carry out regular inspections during the currency of an irradiation licence for the purpose of examining whether it should in relation to that irradiation licence exercise any of its powers³. The licensing authority and each food authority⁴ within its area must severally enforce the prohibition on treatment without a licence⁵ in so far as it falls to be observed by any person other than the holder of a current irradiation licence⁶. Each food authority must enforce within its area the provisions of the Food (Control of Irradiation) Regulations 1990 save in so far as they fall to be enforced by the licensing authority⁷.

Each authority concerned in the administration of the Food (Control of Irradiation) Regulations 1990 must give to each other authority so concerned such assistance and information as that other authority may reasonably require for the purpose of its duties under the regulations⁸.

Where any charge under the Food (Control of Irradiation) Regulations 1990 or under an irradiation licence granted by the licensing authority falls to be paid to the licensing authority but remains outstanding, that charge is to be recoverable by the licensing authority as a civil debt⁹.

1 For the meaning of 'licensing authority' see PARA 321 note 2 ante.

2 For the meaning of 'irradiation licence' see PARA 320 note 7 ante. As to irradiation licences see PARA 321 ante.

3 Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 9(3). The powers referred to in the text are under Sch 1 Pt IV paras 1-3: see PARA 321 text and note 31 ante.

4 'Food authority' does not include the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1) (c) (see PARA 251 ante) (which deals with the Inner Temple and the Middle Temple): Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 9(7).

5 I.e. the provisions of *ibid* reg 3: see PARA 320 ante.

6 *Ibid* reg 9(4).

7 *Ibid* reg 9(5). The text refers to provisions enforced under reg 9(3) or 9(4): see the text to notes 3, 6 *supra*.

8 *Ibid* reg 9(6).

9 *Ibid* reg 9(8). As to charges payable under the Food (Control of Irradiation) Regulations 1990, SI 1990/2490, see Sch 1 Pt VI.

UPDATE

320-324 Irradiation

SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(vi) Irradiation/323. Penalties.

323. Penalties.

If any person contravenes or fails to comply with the Food (Control of Irradiation) Regulations 1990¹ or, for the purposes of those regulations, makes any false statement or uses any document containing a false statement either recklessly or knowing it to be false, he is guilty of an offence².

If any person who holds an irradiation licence³ contravenes or fails to comply with any condition of that irradiation licence⁴ he is guilty of an offence⁵.

1 Ie the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 regs 3, 4, 5, 6: see PARA 320 ante.

2 Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 9(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both, and on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both: reg 9(1). As to the statutory maximum see PARA 261 note 23 ante.

3 For the meaning of 'irradiation licence' see PARA 320 note 7 ante.

4 Ie other than the condition required to be included by the Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 3(2), Sch 1 Pt II para 17: see PARA 321 text and note 28 ante.

5 Ibid reg 9(2). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both, and on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both: reg 9(2).

UPDATE

320-324 Irradiation

SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(vi) Irradiation/324. Defence in relation to exports.

324. Defence in relation to exports.

In any proceedings for an offence¹ under the Food (Control of Irradiation) Regulations 1990² it is a defence for the person charged to prove³:

- 185 (1) that the food⁴, in respect of which the offence is alleged to have been committed, was intended for export to another member state of the European Economic Community and that the food complied with that member state's domestic food legislation relevant to the alleged offence⁵; or
- 186 (2) that the food, in respect of which the offence is alleged to have been committed, was intended for export to a country which is not a member of the European Economic Community for sale⁶ to the ultimate consumer⁷ within that country⁸.

1 As to the offences see PARA 320 ante.

2 Ie the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended).

3 Ibid reg 8(1).

4 For the meaning of 'food' see PARA 320 note 3 ante; definition applied by ibid reg 2(1).

5 Ibid reg 8(1)(a).

6 For the meaning of 'sale' see PARA 320 note 4 ante.

7 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante; definition applied by the Food (Control of Irradiation) Regulations 1990, SI 1990/2490, reg 8(2).

8 Ibid reg 8(1)(b).

UPDATE

320-324 Irradiation

SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(4) GENERAL HYGIENE AND CONTAMINATION REGULATIONS/(vii) Imitation/325. Products appearing to be food.

(vii) Imitation

325. Products appearing to be food.

No person may supply, offer to supply, agree to supply, expose for supply or possess for supply any manufactured goods¹ which are ordinarily intended for private use and are not food but which²: (1) have a form, odour, colour, appearance, packaging, labelling, volume or size which is likely to cause persons, in particular children, to confuse them with food and in consequence to place them in their mouths or suck them or swallow them³; and (2) where such action as is mentioned in head (1) above is taken in relation to them, may cause death or personal injury⁴.

1 'Goods' do not include those mentioned in the Consumer Protection Act 1987 s 11(7)(a)-(d) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 619) or: (1) marbles; (2) products bona fide intended for use to represent food in a dolls' house or other model scene or setting; or (3) anything consisting entirely of articles or substances used as ingredients in the preparation of food: Food Imitations (Safety) Regulations 1989, SI 1989/1291, reg 3. 'Food' means food for human consumption and includes drink, chewing gum and other products of a like nature and use and articles and substances used as ingredients in the preparation of food or drink or of such products: reg 3.

2 Ibid reg 4.

3 Ibid reg 4(a). It is an offence to breach these regulations: see the Consumer Protection Act 1987 s 12(1); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 540.

4 Food Imitations (Safety) Regulations 1989, SI 1989/1291, reg 4(b).

UPDATE

325 Products appearing to be food

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(i) Introduction/326. Sectoral hygiene regulations.

(5) SECTORAL HYGIENE

(i) Introduction

326. Sectoral hygiene regulations.

A wide range of particular foods are governed mainly by sectoral hygiene regulations¹. Even where sectoral regulations apply, some provisions of the Food Safety (General Food Hygiene) Regulations 1995² are still applicable³. The sectoral regulations provide for the approval or licensing of production establishments, specify hygienic methods of production and processing, make provision with regard to transport and storage, prescribe requirements for labelling (particularly in order for the place of production to be identified on the label), and specify the methods of testing and sampling of food⁴.

Regulations have been made relating to the risk of infection from consuming meat of animals infected with Bovine Spongiform Encephalopathy. The regulations encompass matters such as the animals which may be used for human consumption, the removal of specified parts of slaughtered animals from the human food chain, the licensing of slaughterhouses at which cattle may be processed, and the labelling and identification of British beef⁵.

1 See eg the Egg Products Regulations 1993, SI 1993/1520 (as amended) (see PARA 430 post); the Meat Products (Hygiene Regulations) 1994, SI 1994/3082 (as amended) (see PARAS 328-330 post); the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended) (see PARAS 478, 503-506 post); the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540 (as amended) (see PARAS 530-531 post); the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended) (see PARAS 345-347 post); the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended) (see PARAS 331-334 post); the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended) (see PARAS 335-338 post); and the Food Safety (Fishery Products and Live Shellfish) Hygiene Regulations 1998, SI 1998/994 (as amended) (see PARAS 341-344 post).

2 Ie the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (as amended): see PARA 294 et seq ante.

3 See PARA 294 ante.

4 See note 1 supra.

5 See the Diseases of Animals (Ascertainment of Disease) Order 1985, SI 1985/1765; the Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended) (see PARAS 478, 503 et seq post); the Feeding Stuffs Regulations 1995, SI 1995/1412 (amended by SI 1996/1260; SI 1998/104; SI 1998/2027; SI 1999/1528; SI 1999/2325; SI 2000/656); the Bovine Animals (Enforcement of Community Purchase Scheme) Regulations 1996, SI 1996/1193; the Fresh Meat (Beef Controls) (No 2) Regulations 1996, SI 1996/2097 (as amended) (see PARA 327 post); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645); the Bovine Spongiform Encephalopathy (No 2) Order 1996, SI 1996/3183 (amended by SI 1997/2387; SI 1998/3071; SI 1999/646; SI 1999/921); the Bovine Spongiform Encephalopathy Compensation Order 1996, SI 1996/3184 (amended by SI 1997/2365); the Selective Cull (Enforcement of Community Compensation Conditions) Regulations 1996, SI 1996/3186; the Bovine Hides Regulations 1997, SI 1997/813; the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended) (see PARA 517 post); the Animals and Animal Products (Import and Export) Regulations 1998, SI 1998/190; the BSE Offspring Slaughter Regulations 1998, SI 1998/3070; the Animal By-Products Order 1999, SI 1999/646; the Bovine Spongiform Encephalopathy (Feeding Stuffs and Surveillance) Regulations 1999, SI 1999/882; and the Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103. See further ANIMALS vol 2 (2008) PARA 1071.

UPDATE

326 Sectoral hygiene regulations

TEXT AND NOTES 1-4--SI 1993/1520, SI 1994/3082, SI 1995/539, SI 1995/540, SI 1995/1086, SI 1995/1763, SI 1995/2148, SI 1995/3205, SI 1998/994 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

For new provision in relation to food hygiene see Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

NOTE 5--SI 1985/1765 replaced: Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229 (amended by SI 2007/2809); Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399 (amended by SI 2009/2940). SI 1995/1412 now replaced by Feeding Stuffs (England) Regulations 2005, SI 2005/3281 (amended by SI 2006/113, SI 2006/3120, SI 2006/2808, SI 2007/3008, SI 2008/1523, SI 2009/28); Feeding Stuffs (Wales) Regulations 2001, SI 2001/343 (amended by SI 2001/2253, SI 2006/116, SI 2006/2928); Feeding Stuffs (Wales) Regulations 2006, SI 2006/116 (amended by SI 2006/617, SI 2006/2928, SI 2006/3256, SI 2007/3171, SI 2008/1806, SI 2009/106). SI 1996/1193 replaced: Older Cattle (Disposal) (England) Regulations 2005, SI 2005/3522; Older Cattle (Disposal) (Wales) Regulations 2006, SI 2006/62. SI 1996/2628 further amended: SI 2006/2166, SI 2006/2237 and, in relation to England, SI 2009/2713. SI 1999/646 Schs 1, 2 amended, in relation to England, by SI 2001/1704 and, in relation to Wales, by SI 2001/1735. SI 1996/3183, SI 1996/3184, SI 1998/3070, SI 1999/882, SI 1999/1103 now replaced by Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881; Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/A. IN GENERAL/327. General provisions relating to meat.

(ii) Meat Hygiene

A. IN GENERAL

327. General provisions relating to meat.

Provisions regulating the composition, labelling and advertising of meat and meat products, and the prohibition or limitation of additives in them are dealt with elsewhere in this title¹. General provisions relating to hygiene when dealing with food apply to meat², and the provisions relating to slaughterhouses and knackers' yards are also applicable³.

In addition, specific hygiene provisions exist which relate to meat products⁴.

1 As to the composition of meat and meat products see PARA 359 et seq post; as to labelling see PARA 371 et seq post; and as to additives see PARAS 366-370 post.

As to the examination of fresh meat for the presence of residues see the Animals and Fresh Meat (Examination for Residues) Regulations 1988, SI 1988/848; and the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, SI 1997/1729. As to the charges to be made in respect of such an examination see the Charges for Inspections and Controls Regulations 1997, SI 1997/2893 (amended by SI 1998/2880).

2 See PARA 293 et seq ante. As to hygiene in relation to imported meat see PARAS 312-315 ante.

3 See PARA 470 et seq post. As to regulations relating to the control of beef see the Fresh Meat (Beef Controls) (No 2) Regulations 1996, SI 1996/2097 (amended by SI 1996/2522). These regulations prohibit the sale for human consumption of specified bovine animals. Meat from animals which belonged to a herd registered under the Beef Assurance Scheme is exempt. As to beef bones, bone-in-beef and other food and ingredients derived from bovine animals aged over six months at slaughter see the Beef Bones Regulations 1997, SI 1997/2959 (amended by SI 1999/3371; SI 1999/3464); and PARA 525 post. As to regulations relating to the despatch of bovine animals, bovine products and bovine by-products to European Union member states and third countries see the Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103; and PARAS 526-529 post.

4 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended); and PARA 328 et seq post. As to provisions in relation to wild game meat see the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148; and PARA 331 et seq post. As to hygiene provisions in relation to fresh meat see the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended); and PARAS 478, 503-506 post. As to hygiene provisions in relation to minced meat and meat preparations see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended); and PARAS 335-338 post. As to regulations relating to the hygiene and inspection of poultry meat, farmed game bird meat and rabbit meat see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540 (as amended); and PARAS 530-531 post.

UPDATE

327 General provisions relating to meat

NOTE 1--SI 1997/1729 amended: SI 2001/3590, SI 2004/147, SI 2005/2626 (England), SI 2005/3254 (Wales), SI 2006/755, SI 2009/1925. SI 1997/2893 replaced: Charges for Residues Surveillance Regulations 2006, SI 2006/2285 (amended by SI 2008/2999, SI 2009/2779).

NOTE 3--SI 1996/2097 revoked: SI 2005/2719 (England), SI 2005/3051 (Wales). SI 1997/2959 further amended: SI 2006/14 (England) (amended by SI 2007/56), SI 2006/31 (Wales). SI 1999/1103 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881, Sch 8 (substituted by SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154, Sch 8 (substituted by SI 2008/3266).

NOTE 4--SI 1994/3082, SI 1995/539, SI 1995/540, SI 1995/2148, SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

New provision has been made in relation to food hygiene: see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/B. MEAT PRODUCTS/328. Approval of meat products premises.

B. MEAT PRODUCTS

328. Approval of meat products premises.

No person is permitted to handle meat products¹ in any meat products premises² unless those premises are approved³, and comply with the appropriate conditions⁴. It is also prohibited to despatch from any approved meat products premises any meat products which do not comply with the provisions of the regulations relating to hygiene in meat products⁵.

No person may use any ambient store, rewrapping centre or cold store for the handling⁶ or storage of meat products unless it is approved or licensed and complies with the appropriate requirements⁷.

No person may despatch any meat products to a relevant EEA state⁸ from meat products premises, or an ambient store, rewrapping centre or cold store which is not approved⁹.

Application for approval is made to the approval authority¹⁰ which must give its approval if it is satisfied that the premises, ambient store, rewrapping centre or cold store complies with the appropriate requirements¹¹.

The occupier of any approved premises must notify the approval authority of any change of directors, managers or controllers or change of possession of such premises, and any person who intends to occupy approved premises for the purposes of carrying out any business for which those premises are approved must notify the approval authority of his intention¹².

The approval authority may revoke an approval granted by it if it is satisfied that there is an obvious failure in respect of the premises to comply with the regulations relating to hygiene in meat products, any conditions have not been complied with, there are obstacles to an adequate health inspection of the premises, that the business is no longer being carried out at the premises, or that the premises have become exempt¹³. The approval authority also has power to suspend an approval¹⁴. Any person who is aggrieved by a decision of an approval authority may appeal to a magistrates' court¹⁵.

1 'Meat products' means products for human consumption prepared from or with meat which has undergone treatment such that the cut surface shows that the product no longer has the characteristics of fresh meat, but not: (1) meat which has undergone only cold treatment; (2) minced meat; (3) mechanically recovered meat; or (4) meat preparations: Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 2(1). For the meaning of 'human consumption' see PARA 201 note 3 ante. 'Treatment' means any chemical or physical process such as heating, smoking, salting, marinating, curing or drying, intended to preserve meat or animal products whether or not associated with other foodstuffs, or a combination of these various processes: reg 2(1).

2 Ibid reg 4 applies to meat products premises other than ambient stores, rewrapping centres and cold stores: reg 4(2). 'Meat products premises' means any industrial or non-industrial premises handling or storing meat products: reg 2(1). 'Ambient store' means any premises, not being part of meat products premises approved under the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended), which store unpackaged meat products under non-refrigerated conditions: reg 2(1). 'Rewrapping centre' means premises where any of the following operations is carried out: (1) meat products are unwrapped, sliced or cut and subsequently rewrapped prior to despatch; or (2) unpackaged meat products from different establishments are assembled into batches for despatch, and 'rewrapped', in relation to meat products, has a corresponding meaning: reg 2(1). 'Wrapping', in relation to meat products or other products of animal origin, means the protection of those products by the use of an initial wrapping or initial container in direct contact with the product concerned as well as the initial wrapper or initial container itself: reg 2(1). 'Cold store' means any premises, not being part of approved meat products premises, which store unpackaged meat products under refrigerated conditions: reg 2(1).

- 3 le under the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended).
- 4 See *ibid* reg 4(1). The conditions are set out in reg 4(1), Schs 1, 2 (both as amended): see PARA 329 post.
- 5 See *ibid* reg 4(3).
- 6 'Handling' means manufacturing, preparing, processing, packaging, wrapping, and rewrapping, and 'handled' has a corresponding meaning: *ibid* reg 2(1).
- 7 See *ibid* reg 5(1). The conditions are set out in the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, Schs 1, 2 (both as amended): see PARA 329 post.
- 8 'EEA State' means a state which is a contracting party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein (and accordingly includes any state that was a member state of the European Community before that Agreement, and any other state which is a contracting party to the Agreement, whether or not it becomes such a member state): *ibid* reg 2(1). 'Relevant EEA State' means an EEA state other than Iceland: reg 2(1). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as amended by the Protocol signed at Brussels on 17 March 1993: reg 2(1).
- 9 See *ibid* regs 4(3), 5(2).
- 10 'Approval authority' means: (1) in relation to combined premises, the Food Standards Agency; and (2) in relation to other premises, the food authority in whose area they are situated: *ibid* reg 2(1) (definition amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante. 'Food authority' includes a port health authority: Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 2(1). 'Combined premises' means: (a) premises where meat processing operations are carried on and which share a common curtilage with or fall within the same curtilage as a slaughterhouse; and (b) any licensed cold store which stores both fresh meat and meat products: reg 2(1) (definition amended by SI 2000/225).
- 11 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 4(4)-(7) (amended by SI 1999/683; and SI 2000/225); and the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 5(3)-(6) (amended by SI 2000/225). The conditions are set out in the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, Schs 1, 2 (both as amended): see PARA 329 post.
- 12 See *ibid* reg 5A (added by SI 2000/225).
- 13 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 6 (amended by SI 2000/225).
- 14 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 6A (added by SI 2000/225).
- 15 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 7 (amended by SI 2000/225).

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

328-330 Meat Products

SI 1994/3082 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations

2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/B. MEAT PRODUCTS/329. Conditions for the handling, storing and marketing of meat products.

329. Conditions for the handling, storing and marketing of meat products.

No person is permitted to sell for human consumption from approved meat products premises¹ any meat product manufactured in Great Britain² unless: (1) it has been handled and stored in accordance with the appropriate requirements³; (2) it has been prepared from raw materials which comply with the requirements as to raw materials⁴; and (3) it has been checked⁵.

Apart from the general requirements contained in heads (1) to (3) above, there are requirements relating to information⁶. No person may sell for human consumption any meat product manufactured in Great Britain which is intended for consignment to a relevant EEA state⁷, or sell for human consumption any meat product handled⁸ or stored in Great Britain unless: (a) it has been wrapped⁹, packaged or labelled at manufacturing premises¹⁰ or at an approved rewrapping centre¹¹; (b) it carries the required health mark¹²; and (c) the packaging carries an indication of storage temperature and durability¹³. Meat products must be stored and transported in the prescribed manner¹⁴.

The occupier of an establishment must ensure that at all stages of production or rewrapping of meat products and other products of animal origin, the provisions relating to hygiene of meat products are complied with and must carry out his own checks to ensure:

- 187 (i) that critical points in the establishment relative to the process used are identified and acceptable to the enforcement authority¹⁵;
- 188 (ii) that methods for monitoring and controlling such critical points are established and acceptable to the enforcement authority¹⁶;
- 189 (iii) if samples are taken for the purpose of checking, cleaning and disinfection or for the purpose of checking compliance with the prescribed standards¹⁷, that they are analysed or examined as appropriate in a laboratory acceptable to the enforcement authority¹⁸;
- 190 (iv) that as far as is reasonable and practicable a record in permanent form is kept and made available to an authorised officer of the enforcement authority upon request, and is kept in respect of the matters specified in heads (i) to (iii) above for a period of at least two years¹⁹;
- 191 (v) that health marking is controlled and carried out properly²⁰;
- 192 (vi) that the enforcement authority is notified immediately when a laboratory examination of samples or any other information at the occupier's disposal reveals a health risk²¹; and
- 193 (vii) in the event of an imminent health risk, the withdrawal from the market of the quantity of products obtained under technologically similar conditions and likely to present the same risk²².

The occupier of an establishment must also ensure that workers at the establishment are given instruction and training with regard to hygiene matters, but the instruction and training given to a worker need only be such as is appropriate to any task undertaken by the worker²³.

No person may sell for human consumption any prepared food²⁴ obtained from raw materials of animal origin and manufactured on approved premises unless it has been prepared in accordance with the general conditions of hygiene²⁵, meets the special conditions for meat based prepared meals²⁶ and has been checked in accordance with heads (i) to (vii) above²⁷.

Other products of animal origin²⁸ may only be manufactured and sold if they comply with specified requirements²⁹.

1 For the meaning of 'meat products' see PARA 328 note 1 ante; and for the meaning of 'meat products premises' see PARA 328 note 2 ante.

2 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

3 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 8(a). The general conditions for approval of establishments are contained in reg 8, Sch 1 Pt I (amended by SI 1999/683). There are also general conditions of hygiene: see the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, Sch 1 Pt II (amended by SI 1999/683).

4 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 8(b). The requirements are those contained in Sch 2 Pt III (amended by SI 1995/3205; and SI 1999/683).

5 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 8(c). Checking must be carried out in accordance with reg 13: see the text and notes 15-23 infra.

6 See *ibid* regs 9-11 (reg 10 as amended); and the text and notes 11-13 infra.

7 For the meaning of 'relevant EEA state' see PARA 328 note 3 ante.

8 For the meaning of 'handled' see PARA 328 note 6 ante.

9 For the meaning of 'wrapped' see PARA 328 note 2 ante.

10 *Ie* in accordance with the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, Sch 2 Pt V (amended by SI 1999/683).

11 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 9.

12 See *ibid* reg 10 (amended by SI 1999/683). Health marks must be applied in accordance with the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, Sch 2 Pt VI (amended by SI 1999/683).

13 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 11.

14 See *ibid* reg 12, Sch 2 Pt VII (amended by SI 1999/683).

15 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 13(1)(a). As to the enforcement authority see PARA 330 post.

16 *Ibid* reg 13(1)(b).

17 *Ie* as prescribed in *ibid* Sch 1 Pt II para A1.

18 *Ibid* reg 13(1)(c).

19 *Ibid* reg 13(1)(d). In the case of meat products which cannot be stored at an ambient temperature, the period may be reduced to six months after the minimum durability date of the product: reg 13(1)(d).

20 *Ibid* reg 13(1)(e).

21 *Ibid* reg 13(1)(f).

22 *Ibid* reg 13(1)(g). Any quantity of the products so withdrawn must be held under the supervision and control of the enforcement authority until it is destroyed, used for purposes other than human consumption, or, with the agreement of the enforcement authority, reprocessed in a manner appropriate to ensure it is safe for human consumption: reg 13(1)(g).

23 *Ibid* reg 13(2).

24 'Prepared food' means any food, intended for human consumption, not being a meat product or other product of animal origin or a meat-based prepared meal which is handled in an establishment: *ibid* reg 2(1).

25 *Ie* in accordance with *ibid* Sch 1 Pt II.

26 ie the provisions of ibid Sch 2 Pt IX (amended by SI 1999/683; and SI 2000/790).

27 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 14.

28 'Other products of animal origin' means the following products intended for human consumption: (1) meat extracts; (2) rendered animal fat, ie fat derived from rendering meat, including bones; (3) greaves, ie the protein-containing residue of rendering, after partial separation of fat and water; (4) meat powder, powdered rind, salted or dried blood, salted or dried blood plasma; (5) stomachs, bladders and intestines, cleaned, salted or dried, and/or heated: ibid reg 2(1).

29 See ibid regs 15, 16 (reg 15 amended by SI 1999/683). The requirements are contained in the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 15, Schs 2, 5 (amended by SI 1999/683). There are also conditions in relation to the transportation of other products of animal origin: see the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 17.

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328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

328-330 Meat Products

SI 1994/3082 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/B. MEAT PRODUCTS/330. Exemptions, enforcement and penalties.

330. Exemptions, enforcement and penalties.

The regulations relating to hygiene in meat products¹ do not apply to establishments handling² or storing meat products or other products of animal origin³ exclusively for sale from those establishments to the final consumer, or to persons engaged in such handling, storing or selling, or to the transporting of meat products to the final consumer⁴. However, such establishments are governed by specific provisions relating to the licensing of butchers' shops⁵.

Each food authority⁶ is responsible in its area for the supervision of establishments and the enforcement and execution of the regulations relating to hygiene in meat products⁷ and they have a duty to provide the Food Standards Agency⁸ with any information relating to the execution of their duties that it may require⁹. The Agency is responsible for the supervision of, and the execution and enforcement of the regulations in relation to combined premises¹⁰.

If a person¹¹ contravenes any provision of the regulations, or the occupier of any establishment fails to take all reasonable steps to secure the compliance by any person employed by him or any person admitted to that establishment with any provision of the regulations, he is guilty of an offence¹².

1 I.e. the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended): see PARAS 328-329 ante. For the meaning of 'meat products' see PARA 328 note 1 ante.

2 For the meaning of 'handling' see PARA 328 note 6 ante.

3 For the meaning of 'other products of animal origin' see PARA 329 note 28 ante.

4 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 3 (amended by SI 2000/225). However, no person who, by virtue of the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 3 (as amended), is stated to be exempt from those regulations may sell or possess for sale any meat products or other products of animal origin unless the appropriate hygiene operations have been carried out in relation to those products: reg 3A(1) (reg 3A added by SI 2000/225). Notwithstanding the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 3 (as amended), regs 2 (as amended), 19 (as amended), 20, 21 (as amended), 22 (as amended) (see the text and notes 6-11 infra) apply in respect of the prohibitions imposed by reg 3A(1) (as added): reg 3A(2) (as so added).

5 See PARA 296 ante.

6 For the meaning of 'food authority' see PARA 328 note 2 ante.

7 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 19 (amended by SI 2000/656). As to the regulations relating to hygiene in meat products see the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended); and PARAS 328-329 ante. Officers authorised by the food authority have power in certain circumstances to prohibit the use of any equipment or premises, impose conditions on or prohibit the carrying out of any process, or require the rate of operation to be reduced or stopped: see reg 19A (added by SI 2000/225).

8 As to the establishment of the Food Standards Agency see PARA 225 ante.

9 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 22 (amended by SI 2000/656). The Meat Hygiene Service, an executive agency of the Food Standards Authority, acts as an enforcement agency and inspection service in relation to meat hygiene.

10 See the Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 19 (as amended: see note 7 supra).

11 le other than an approval authority or enforcement authority. For the meaning of 'approval authority' see PARA 328 note 2 ante.

12 Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 20(1). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 20(1). No prosecution for such an offence may commence after the expiry of: (1) three years from the commission of the offence; or (2) one year from its discovery by the prosecutor, whichever is the earlier: reg 20(2). As to the statutory maximum see PARA 261 note 23 ante.

The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 9 (inspection and seizure of suspected food) (see PARA 284 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Meat Products (Hygiene) Regulations 1994, SI 1994/3082, reg 21 (amended by SI 2000/225).

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328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

328-330 Meat Products

SI 1994/3082 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/C. WILD GAME MEAT/331. Licensing of wild game processing facilities.

C. WILD GAME MEAT

331. Licensing of wild game processing facilities.

A wild game processing facility¹ may not be used for the purpose of dressing or cutting up wild game, the meat derived from which is intended for consignment, or sale for consignment, to a relevant EEA state² for human consumption, unless it is licensed³. Application for a licence is made to the Food Standards Agency which must licence the wild game processing facility to which the application relates if it is satisfied that it complies with the appropriate requirements⁴. Any facility must comply with the requirements as to the construction, layout and equipment⁵, the hygiene requirements in relation to staff, premises, equipment and instruments⁶, the hygiene requirements in respect of the preparation and handling of wild game⁷, the post-mortem health inspection requirements⁸ and the hygiene requirements for cutting up wild game⁹.

The Agency may revoke a licence if it is satisfied that: (1) the conditions of hygiene at those premises are inadequate and the occupier has failed to take the necessary measures to make good the shortcomings within such period as the Agency may specify; (2) any requirement as to hygiene has not been complied with and inadequate or no action has been taken to ensure that a similar breach does not occur in future; (3) any agreement made by the occupier with the Agency to carry out and complete any works has not been complied with; (4) any condition attached to the licence has not been complied with; or (5) the premises no longer fall within the regulations because the business carried on at the premises has ceased to include the consignment or sale for consignment to a relevant EEA State of wild game meat for human consumption¹⁰.

Any person who wishes to appeal against a decision of the Agency may appeal to a meat hygiene appeals tribunal¹¹.

1 'Wild game processing facility' means any establishment used for the purpose of dressing or cutting up wild game, the meat derived from which is intended for sale for human consumption: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 2(1). 'Wild game' means wild land mammals which are hunted (including wild mammals living within an enclosed area under conditions of freedom similar to those enjoyed by wild game), and wild birds: reg 2(1). 'Cutting up' means: (1) cutting meat of large wild game into pieces smaller than half carcasses; (2) cutting meat of small wild game into pieces smaller than carcasses; or (3) removing bones from wild game meat: reg 2(1). 'Large wild game' means wild ungulates: reg 2(1). 'Small wild game' means wild mammals of the *Leporidae* family and wild birds intended for human consumption: reg 2(1). 'Carcase' means the eviscerated, and in the case of birds plucked, body of any wild game, with or without the head and lower legs: reg 2(1). 'Wild game meat' means all parts of wild game which are suitable for human consumption and which have not undergone any preserving process other than chilling, freezing, vacuum wrapping or wrapping in a controlled atmosphere: reg 2(1). 'Wrapping', in relation to meat products or other products of animal origin, means the protection of those products by the use of an initial wrapping or initial container in direct contact with the product concerned as well as the initial wrapper or initial container itself: reg 2(1). For the meaning of 'human consumption' see PARA 201 note 3 ante.

2 'Relevant EEA State' means an EEA State other than Iceland: *ibid* reg 2(1). 'EEA State' means a state which is a contracting party to the EEA Agreement: reg 2(1). 'EEA Agreement' means the Agreement on the European Economic Area (OJ L1, 3.1.94, p 1) signed at Oporto on 2 May 1992, as adjusted by the Protocol (OJ L1, 3.1.94, p 571) signed at Brussels on 17 March 1993: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 2(1).

3 See *ibid* reg 3(1). 'Licensed', in relation to any wild game processing facility, means licensed by the Food Standards Agency under reg 3 (as amended), and 'licence' has a corresponding meaning: reg 2(1) (definition amended by SI 2000/656). As to the establishment of the Food Standards Agency see *PARA* 225 *ante*.

4 See the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 3(2)-(7) (amended by SI 2000/656). The requirements are that the facility complies with the requirements as to construction, layout and equipment contained in the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 3(2) (as amended), Sch 1 (see the text and note 5 *infra*), and the method of operation in those premises comply with the requirements of reg 3(2)(a) (as amended), Schs 2-6 (see the text and notes 6-9 *infra*) and there is no significant risk that the facilities for inspection under Sch 4 (see the text and note 8 *infra*) will be denied or that any wild game meat condemned under those provisions will be used for human consumption: reg 3(2)(a) (amended by SI 2000/656). In addition, where fresh meat and wild game meat are both handled, the Agency must be satisfied that wild game meat will be handled separately or at different times from fresh meat and that measures will be taken to identify clearly the different types of meat: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 3(2)(b) (amended by SI 2000/656). 'Premises' means any wild game processing facility: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 2(1).

5 See *ibid* Sch 1.

6 See *ibid* Sch 2.

7 See *ibid* Sch 3.

8 See *ibid* Sch 4. For the post-mortem approval or condemnation factors see Sch 5.

9 See *ibid* Sch 6.

10 See *ibid* reg 4(1) (amended by SI 2000/656). The Agency must notify the occupier in writing of its decision to revoke his licence: see the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 4(2)-(4) (reg 4(2), (4) amended by SI 2000/656). 'Occupier' means any person carrying on the business of a wild game processing facility or, in so far as the context requires, a cold store or a re-wrapping centre or his duly authorised representative and, in relation to an application in respect of any wild game processing facility for a licence under the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 3 (as amended), includes the owner of those premises, the person proposing to occupy those premises and the duly authorised representative of any such person: reg 2(1).

11 *Ibid* reg 5, Sch 12 (both amended by SI 2000/656). As to meat hygiene appeals tribunals see *PARAS* 339-340 *post*.

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328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

331-334 Wild Game Meat

SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and *PARA* 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/C. WILD GAME MEAT/332. Supervision and control of wild game processing facilities.

332. Supervision and control of wild game processing facilities.

The Food Standards Agency¹ may designate official veterinary surgeons (OVSs) and must, in relation to any licensed premises², appoint one or more OVSs, in each case to be an authorised officer of the Agency authorised to act in relation to the examination and seizure of wild game meat³, to provide the health certification of wild game meat and to be responsible for certain functions in relation to those premises⁴. The functions are:

- 194 (1) the post mortem health inspection of wild game⁵;
- 195 (2) the approval as fit, or the condemnation as unfit, for human consumption of wild game meat⁶;
- 196 (3) where appropriate, the examination of the meat of wild boar for trichinellosis⁷;
- 197 (4) the health marking of wild game meat⁸;
- 198 (5) securing the observance of the requirements as to hygiene, wrapping and packaging and transport⁹; and
- 199 (6) the carrying out of any necessary training, and the supervision, of plant inspection assistants (PIAs)¹⁰.

The Agency may revoke or suspend the designation of any person as an OVS if it appears to it that such person is unfit to perform the functions of an OVS¹¹.

Where it appears to an OVS that in respect of any licensed premises to which he is appointed: (a) any of the requirements as to hygiene is being breached; (b) adequate health inspection is being hampered; or (c) the requirements in relation to PIAs¹² have not been complied with, he may, by notice in writing given to the occupier of the premises prohibit the use of any equipment or any part of the premises specified in the notice, or require the rate of operation to be reduced to such an extent as is specified in the notice, and the occupier must comply with the notice¹³. A person who is aggrieved by a decision of an OVS may appeal to a magistrates' court¹⁴.

An OVS, in relation to any premises to which he is appointed, or a veterinary officer¹⁵, may subject any killed wild game or wild game meat in any licensed premises to such examinations (including the taking and analysis of samples) as he may reasonably consider to be necessary for the protection of public health; and an OVS, a veterinary officer or an inspector may, by notice in writing given to the occupier of any such premises, state that he requires to examine on the premises any killed wild game or wild game meat specified in the notice, and once such notice is received the occupier must detain any such game or meat until such time as he is informed in writing by the OVS, veterinary officer or inspector (as the case may be) that the result of any such examination has been obtained¹⁶.

The Agency has a duty to arrange for post-mortem health inspections to be carried out at all licensed premises¹⁷. Where wild game meat has been passed as fit for human consumption¹⁸ following post-mortem health inspection and complies with the hygiene requirements, the health mark must be applied to it, and no other meat may be so marked¹⁹. Meat derived from unskinned large wild game may not bear the health mark²⁰. No person may remove, or cause or permit to be removed, from any licensed premises any carcase²¹, part of a carcase or offal intended for consignment or sale for consignment to a relevant EEA state²² for human

consumption unless it has been inspected in accordance with these provisions²³. The Agency has a duty to keep records of post-mortem health inspections²⁴.

The occupier of any licensed premises must keep adequate records and take all practicable steps to secure compliance with the provisions relating to hygiene and inspection²⁵. Notice of operation of licensed premises must be given to the Agency²⁶.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'licensed' see PARA 331 note 3 ante; and for the meaning of 'premises' see PARA 331 note 4 ante.

3 For the meaning of 'wild game meat' see PARA 331 note 1 ante.

4 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 6(1) (amended by SI 2000/656). Inspectors may be appointed to assist the OVSs: see the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 6(2)-(4) (reg 6(2) amended by SI 2000/656). As to the relation between OVSs appointed under other hygiene regulations and ones appointed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended) see reg 6(5), (6). As to the charges for inspections see the Meat (Hygiene and Inspection) (Charges) Regulations 1998, SI 1998/2095 (amended by SI 2000/224; and SI 2000/656).

5 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 6(1)(a). The inspection is carried out in accordance with reg 6(1)(a), Sch 4: see PARA 331 ante.

6 Ibid reg 6(1)(b). The approval or condemnation is carried out in accordance with reg 6(1)(b), Sch 5: see PARA 331 ante.

7 Ibid reg 6(1)(c).

8 Ibid reg 6(1)(d). Health marking is carried out in accordance with reg 6(1)(d), Sch 7 (amended by SI 2000/656).

9 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 6(1)(e). The requirements as to hygiene are contained in reg 6(1)(e), Schs 1, 2, 3, 6: see PARA 331 ante. The requirements as to wrapping and packaging are contained in reg 6(1)(e), Sch 8. The requirements as to transport are contained in reg 6(1)(e), Sch 9.

10 Ibid reg 6(1)(f). The Agency may, in relation to any licensed premises processing small wild game, authorise persons employed at those premises to act as PIAs to carry out the post-mortem health inspection requirements contained in Sch 4: see reg 9.

11 See ibid reg 7 (amended by SI 2000/656).

12 Ie the requirements of the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 15(3).

13 Ibid reg 8(1). A notice given under reg 8(1) must specify the breach that has occurred, the action needed to remedy it and the details specified in the Food Safety Act 1990 s 37(6) (see PARA 469 post): see the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 8(3). For the meaning of 'occupier' see PARA 331 note 19 ante.

14 Ibid reg 8(2).

15 'Veterinary officer' means a veterinary officer of the Agency: ibid reg 2(1) (definition amended by SI 2000/656). A veterinary officer may at any time give to an OVS such reasonable directions as he may consider necessary to ensure that the duties and functions of such a person under the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended) are being complied with, and the OVS is required to comply with those directions: reg 8(5).

16 Ibid reg 8(4).

17 Ibid reg 10(1) (amended by SI 2000/656). Post-mortem examinations must be carried out in accordance with the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, Sch 4.

18 Ie in accordance with ibid Sch 5 Pt I.

19 Ibid reg 10(2). The health mark must be applied in accordance with the requirements of Sch 7 (as amended). The health mark must be applied by persons acting under the responsibility of an OVS, and no other person may apply the health mark or possess or use the equipment for applying the health mark: reg 10(5). The equipment for applying the health mark and any labels, wrapping or seals on which the health mark is printed must be kept under the responsibility of the OVS: reg 10(6). No person may use any mark so resembling a health mark, or in such a way, as to be likely to suggest that the product has been produced in accordance with the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended): reg 10(7).

20 Ibid reg 10(3).

21 For the meaning of 'carcase' see PARA 331 note 1 ante.

22 For the meaning of 'relevant EEA state' see PARA 331 note 3 ante.

23 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 10(4). The provisions referred to in the text are the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended).

24 See ibid reg 14 (amended by SI 2000/656).

25 See the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 15 (amended by SI 2000/656).

26 See the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 11 (amended by SI 2000/656).

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328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

331-334 Wild Game Meat

SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

332 Supervision and control of wild game processing facilities

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--SI 1998/2095 revoked: SI 2005/2983 (England); SI 2005/3370 (Wales).

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333. Conditions for the marketing of wild game meat.

No person is permitted to consign, or sell for consignment, to a relevant EEA state¹ wild game meat² for human consumption unless:

- 200 (1) it has been obtained from supervised licensed premises³ or from a cold store or re-wrapping centre⁴;
- 201 (2) it comes from wild game⁵ which: (a) has been killed by hunting; (b) does not come from a restricted region⁶; (c) immediately after killing has been prepared⁷ and transported to licensed premises under satisfactory hygiene conditions within a reasonable time and at such temperatures that the required inspections⁸ can be carried out; and (d) has been handled under hygienic conditions⁹;
- 202 (3) it comes from the body of a wild game animal which has been subjected to a post-mortem health inspection¹⁰ and approved as fit for human consumption¹¹;
- 203 (4) in the case of small wild game¹², a representative sample of such killed game from the same source or batch has undergone an inspection¹³;
- 204 (5) it has been given a health mark¹⁴;
- 205 (6) it is accompanied during transportation from licensed premises, from a cold store or from a re-wrapping centre, by a commercial document or by a veterinary health certificate¹⁵;
- 206 (7) it has been stored after the post-mortem health inspection in licensed premises or in a cold store or re-wrapping centre under hygienic conditions¹⁶;
- 207 (8) if it is wrapped or packaged, it has been wrapped or packaged under hygienic conditions¹⁷; and
- 208 (9) where it is being or has been transported to licensed premises or to a cold store or re-wrapping centre, it is being or has been transported under hygienic conditions¹⁸.

No person may consign or sell for consignment to a relevant EEA state for human consumption:

- 209 (a) wild game meat which has been condemned as unfit for human consumption¹⁹;
- 210 (b) wild game meat which has been treated with ionising or ultra-violet radiation²⁰;
- 211 (c) wild game meat which has been treated with colourings other than those used for health marking²¹;
- 212 (d) wild game meat obtained from animals which have ingested substances which are likely to make the meat dangerous or harmful to human health²²;
- 213 (e) offal of large wild game declared fit for human consumption unless it has undergone appropriate treatment²³;
- 214 (f) unskinned or unplucked and uneviscerated small wild game which has been frozen or which has not been handled and stored separately from fresh meat and skinned or plucked wild game meat²⁴; or
- 215 (g) unskinned large wild game²⁵.

Heads (1) to (9) above and heads (a) to (g) above do not apply to killed wild game or parts of it carried by travellers in their private vehicle and intended for their personal consumption, or wild game meat sent as small packages to private persons²⁶.

1 For the meaning of 'relevant EEA state' see PARA 331 note 3 ante.

2 For the meaning of 'wild game meat' see PARA 331 note 1 ante.

3 For the meaning of 'licensed' see PARA 331 note 3 ante; and for the meaning of 'premises' see PARA 331 note 4 ante. Premises are supervised in accordance with the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 6 (as amended): see PARA 332 ante.

4 Ibid reg 12(1)(a). The provisions of reg 12(1) do not apply to wild game meat imported from a relevant EEA state or third countries, save that wild game meat so imported must be handled in accordance with the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended): reg 12(4).

5 For the meaning of 'wild game' see PARA 331 note 1 ante.

6 I.e. a region subject to restrictions pursuant to EC Council Directive 72/461 (OJ L302, 31.12.72, p 24) on health problems affecting intra-Community trade in fresh meat (as amended); EC Council Directive 91/494 (OJ L268, 24.9.91, p 35) on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultry meat (as amended); and EC Council Directive 91/495 (OJ L268, 24.9.91, p 41) concerning public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat (as amended).

7 I.e. in accordance with the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 12, Sch 3 para 1.

8 I.e. the inspections required by ibid reg 12, Sch 4.

9 See ibid reg 12(1)(b). Handling must be carried out in accordance with reg 12, Schs 3-6.

10 I.e. in accordance with ibid Sch 4.

11 Ibid reg 12(1)(c). Meat is approved for human consumption in accordance with Sch 5 Pt I.

12 For the meaning of 'small wild game' see PARA 331 note 1 ante.

13 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 12(1)(d). An inspection must be carried out in accordance with Sch 4.

14 Ibid reg 12(1)(e). A health mark is given in accordance with Sch 7 and, where appropriate, reg 12(1)(e), Sch 13.

15 Ibid reg 12(1)(f). As to the requirements for transport documentation see reg 13, Sch 11.

16 Ibid reg 12(1)(f). The conditions are contained in Sch 3 para 2(g).

17 Ibid reg 12(1)(g). The conditions are contained in Sch 8.

18 Ibid reg 12(1)(h). The conditions are contained in Sch 9.

19 Ibid reg 12(2)(a). Meat is condemned in accordance with Sch 5 Pt II.

20 Ibid reg 12(2)(b).

21 Ibid reg 12(2)(c).

22 Ibid reg 12(2)(d).

23 Ibid reg 12(2)(e). Treatment is appropriate if it is carried out in accordance with EC Council Directive 77/99 (OJ L26, 31.1.77, p 85) on health problems affecting intra-Community trade in meat products (as amended).

24 Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 12(2)(f).

25 Ibid reg 12(2)(g). Unskinned large wild game may be sold if it complies with certain requirements: see reg 12(2)(g), Sch 10.

26 See ibid reg 12(3). However, only ten small wild game or a single large wild game animal may be involved and the meat may not come from a country or part of a country from which such trade is prohibited: see reg 12(3).

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

331-334 Wild Game Meat

SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/C. WILD GAME MEAT/334. Penalties and enforcement.

334. Penalties and enforcement.

If any person contravenes a notice given by an official veterinary surgeon (OVS)¹ or fails to give notice of operation of licensed premises to the Food Standards Agency² he is guilty of an offence³. If any person contravenes any other provision of the regulations relating to wild game meat⁴ he is also guilty of an offence⁵. These provisions do not apply to anything done or omitted by the Agency⁶.

The regulations relating to wild game meat are enforced and executed by the Agency in relation to England and Wales⁷.

¹ ie a notice given under the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 8(1): see PARA 332 ante.

² ie notice given under ibid reg 11: see PARA 332 ante. As to the establishment of the Food Standards Agency see PARA 225 ante.

³ Ibid reg 16(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 16(1). As to the standard scale see PARA 242 note 18 ante.

The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 9 (inspection and seizure of suspected food) (see PARA 284 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 17.

⁴ ie the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended).

⁵ Ibid reg 16(2) (amended by SI 2000/656). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both: Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 16(2). As to the statutory maximum see PARA 261 note 23 ante. No prosecution for an offence under reg 16(2) may be begun after the expiry of: (1) three years from the commission of the offence; or (2) one year from its discovery by the prosecutor, whichever is the earlier: reg 16(4) (amended by SI 1995/3205). As to the applicable presumptions and defences under the Food Safety Act 1990 see note 3 supra.

⁶ Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 16(3) (amended by SI 2000/656).

⁷ Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 18 (amended by SI 2000/656).

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat

(Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

331-334 Wild Game Meat

SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/D. MINCED MEAT AND MEAT PREPARATIONS/335. Approval of premises.

D. MINCED MEAT AND MEAT PREPARATIONS

335. Approval of premises.

No person may use any premises¹ for the production² of minced meat³ or meat preparations⁴ intended for consignment or sale⁵ for consignment to a relevant EEA state⁶ for human consumption unless those premises are approved⁷ and comply with the appropriate requirements⁸. Application for approval⁹ is made to the approval authority¹⁰ which must approve the premises: (1) where the premises are licensed¹¹ premises or approved¹² premises if it is satisfied that the appropriate requirements¹³ are met¹⁴; or (b) where the premises are independent premises, for the production of minced meat and meat preparations if it is satisfied that the requirements relating to independent premises¹⁵ are met¹⁶, and must refuse so to approve those premises if it is not so satisfied¹⁷.

The approval authority has power to revoke an approval if it is satisfied that the premises do not comply with the regulations relating to minced meat and meat preparations¹⁸, any condition attached to the approval has not been complied with, adequate health inspection is being hampered, the business is no longer being carried on, or the premises have become exempt¹⁹. The approval authority also has power to suspend an approval²⁰.

Any person who is aggrieved by a decision of an approval authority may appeal to a magistrates' court²¹.

1 'Premises' means any industrial or non-industrial premises: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1).

2 'Production' means manufacturing, preparing, processing, packaging, wrapping or re-wrapping and 'produce' has a corresponding meaning: *ibid* reg 2(1). 'Packaging', in relation to minced meat and meat preparations, means the placing of one or more of those products, wrapped or unwrapped, in a container, as well as the container itself: reg 2(1). 'Wrapping', in relation to minced meat or meat preparations, means the placing of such products in material which comes into direct contact with them, as well as the material itself: reg 2(1).

3 'Minced meat' means meat which has been minced into fragments or passed through a spiral screw mincer and includes such meat to which not more than 1% salt has been added: *ibid* reg 2(1). 'Meat' means parts of animals, excluding solipeds, or birds which are suitable for human consumption and have been: (1) produced in establishments licensed under, and given a health mark in accordance with, the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended); or (2) imported and examined in accordance with the Products of Animal Origin (Import and Export) Regulations 1996, SI 1996/3124 (amended by SI 1997/3023; SI 1998/994): Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1) (amended by SI 1996/3124). For the meaning of 'human consumption' see PARA 201 note 3 ante.

4 'Meat preparation' means meat to which foodstuffs, seasonings or additives have been added or which has undergone a treatment insufficient to modify its internal cellular structure and so alter its characteristics: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1). 'Seasonings' means salt, mustard, spices and aromatic spice extracts, or aromatic herbs and aromatic extracts thereof: reg 2(1).

5 For the meaning of 'sale' see PARA 262 note 5 ante.

6 'Relevant EEA State' means an EEA state other than Iceland: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1). 'EEA State' means a state which is a contracting party to the EEA Agreement: reg 2(1). 'EEA Agreement' means the Agreement on the European Economic Area (OJ L1, 3.1.94, p 1) signed at Oporto on 2 May 1992, as adjusted by the Protocol (OJ L1, 3.1.94, p 571) signed at Brussels on 17 March 1993: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1).

7 le approved under *ibid* reg 4 (as amended).

8 See *ibid* reg 4(1). The requirements are contained in reg 4, Schs 1-14.

The Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended) do not apply to: (1) premises producing or storing minced meat and meat preparations exclusively for direct sale in the United Kingdom to the final consumer from those premises or from a sales point adjacent to those premises; (2) the production of mechanically recovered meat; or (3) the production or sale of minced meat intended to be used as a raw material for the production of sausage meat destined for inclusion in a meat product: reg 3 (amended in relation to England by SI 2000/225). For the meaning of 'United Kingdom' see PARA 206 note 1 ante. In England, no person engaged in any activity giving rise to an exemption pursuant to the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 3 (as amended) may sell, offer for sale or expose for sale, or possess for the purpose of or preparation for sale, any minced meat or meat preparations unless each operation in relation to the meat used as the raw material for that minced meat and those meat preparations required to have been carried out have been carried out: see reg 3A (added by SI 2000/225). In relation to the prohibitions imposed by the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 3A(1) (as added), regs 2, 3, 10, 12 (all as amended), 13 and 14 (see PARA 338 post) apply, notwithstanding reg 3 (as amended): reg 3A(2) (as so added).

9 Applications must be in writing (see *ibid* reg 4(4)), and must contain the name and address of each person who is a manager and director or controller of the applicant (reg 4(4A) (added by SI 2000/225)). The approval authority must be notified of any changes of director, manager and controllers of occupiers and any change of occupier of approved premises: see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 4A (added by SI 2000/225). Any premises approved must be allocated an approval number: see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 4(5). 'Occupier' means a person carrying on the business of producing or storing minced meat or meat preparations: reg 2(1).

10 'Approval authority' means: (1) in relation to combined premises, the Food Standards Agency; and (2) in relation to other premises, the food authority in whose area they are situated: *ibid* reg 2(1) (definition amended by SI 2000/656). 'Combined premises' means: (a) any premises where minced meat or meat preparations are produced and which share a common curtilage with, or fall within the same curtilage with, any licensed premises; or (b) in relation to cold stores, any licensed cold store which stores both fresh meat and unpackaged minced meat or meat preparations: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1) (definition amended by SI 2000/225). 'Food authority' includes a port health authority: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1). As to the establishment of the Food Standards Agency see PARA 225 ante.

11 'Licensed' means licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended) (see PARAS 478, 503-506 post), the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540 (as amended) (see PARAS 530-531 post) or the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148 (as amended) (see PARAS 331-334 ante): Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 2(1).

12 Premises are approved under the Meat Products (Hygiene) Regulations 1994, SI 1994/3082 (as amended): see PARAS 328-330 ante.

13 Such premises must be approved for the production of minced meat if the approval authority is satisfied that the requirements of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 4(2), Sch 1 are met, and for the production of meat preparations if it is satisfied that the requirements of reg 4(2), Sch 2 are met: see reg 4(2)(a).

14 *Ibid* reg 4(2)(a).

15 le the requirements of reg 4(2), Sch 3.

16 *Ibid* reg 4(2)(b).

17 *Ibid* reg 4(2). In the case of non-industrial premises, certain derogations from the structural requirements are permitted: see reg 4(3). The approval authority must notify the applicant in writing of its decision and of the reasons for any refusal to grant approval: reg 4(6).

18 le the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended).

19 *Ibid* reg 5(1) (amended by SI 2000/225). The approval authority is required to give the occupier of the premises notice of revocation in writing, stating: (1) the date on which the revocation is to take effect; and (2) the reasons for the revocation: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 5(2). For these purposes, 'occupier', in relation to a proposed revocation, where the premises are vacant,

means the last person known to the approval authority to have carried on at the premises the business of producing minced meat or meat preparations or his successor in respect of that business: reg 5(4).

20 See *ibid* reg 5A (added by SI 2000/225).

21 See the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 6 (substituted by SI 2000/225).

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

335-338 Minced Meat and Meat Preparations

SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and *PARA 293A*.

335 Approval of premises

NOTE 3--SI 1996/3124 further amended by SI 1999/683; SI 2000/656; and SI 2006/2407; in relation to England only, by SI 2000/2215, SI 2001/1553, SI 2001/1640, SI 2001/3399, SI 2002/889, SI 2003/3003, SI 2003/3177, SI 2005/209, SI 2009/2712; and in relation to Wales only, by SI 2000/2257, SI 2001/1660, SI 2001/2198, SI 2001/2219, SI 2002/47, SI 2002/1476, SI 2003/3229, SI 2005/1310, SI 2010/619.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/D. MINCED MEAT AND MEAT PREPARATIONS/336. Conditions for the marketing of minced meat.

336. Conditions for the marketing of minced meat.

No person is permitted to consign or sell for consignment to a relevant EEA state¹ for human consumption any minced meat² produced in Great Britain³ unless it is derived from meat⁴ of bovine animals, pigs, sheep or goats, and the following conditions are complied with⁵. The conditions are that:

- 216 (1) it has been produced in approved premises⁶;
- 217 (2) it has been prepared from striated muscle (other than heart muscle), including the adjoining fatty tissues, which, in the case of pigmeat, has been examined⁷ or has undergone the appropriate treatment⁸;
- 218 (3) it has been produced in accordance with the appropriate requirements⁹;
- 219 (4) it has been checked¹⁰;
- 220 (5) it has been labelled and given a health mark¹¹;
- 221 (6) it has been wrapped and packaged in accordance with the prescribed requirements¹² and stored in a cold store¹³;
- 222 (7) it is transported in accordance with the prescribed requirements¹⁴;
- 223 (8) it is accompanied during transportation by a commercial document and, where appropriate, by a health certificate¹⁵;
- 224 (9) where the meat from which it is derived has been frozen or deep frozen, such meat was de-boned prior to freezing or deep-freezing and, after freezing or deep-freezing, was not stored for more than the permitted time¹⁶;
- 225 (10) where the meat from which it is derived has been chilled, such meat has been minced within six days of slaughter or, in the case of boned, vacuum-packed beef or veal, within 15 days¹⁷;
- 226 (11) it has undergone cold treatment¹⁸ within one hour of portioning and wrapping¹⁹;
- 227 (12) where it is packaged and presented chilled, it is obtained from meat as described in head (10) above and cooled to an internal temperature below 2° Celsius as quickly as reasonably possible²⁰;
- 228 (13) where it is packaged and presented deep frozen, it is obtained from meat as described in head (9) or head (10) above and complies with the conditions as to quick-frozen foods²¹;
- 229 (14) it has not been treated by ionising or ultraviolet radiation²²; and
- 230 (15) where any of the specified designations are used, the requirements as to total fat content, and collagen content of meat protein are met²³.

Heads (1) to (15) above do not apply to minced meat originating in a relevant EEA state or a third country, save that such minced meat must be handled and transported in accordance with the regulations relating to minced meat and meat preparations²⁴.

No person may sell for human consumption in Great Britain minced meat produced in the United Kingdom²⁵ unless:

- 231 (a) it has been produced in approved premises or in registered premises which comply with the requirements for producing minced meat or meat preparations²⁶;
- 232 (b) it has been produced in accordance with the conditions for the production of minced meat²⁷;

- 233 (c) it has been checked²⁸;
- 234 (d) it has been wrapped and packaged²⁹ and stored in a cold store³⁰; and
- 235 (e) where any of the first three specified designations are used, the requirements as to total fat content, and collagen content of meat protein are met³¹.

- 1 For the meaning of 'relevant EEA state' see PARA 335 note 6 ante.
- 2 For the meaning of 'minced meat' see PARA 335 note 3 ante.
- 3 For the meaning of 'Great Britain' see PARA 206 note 1 ante.
- 4 For the meaning of 'meat' see PARA 335 note 3 ante.
- 5 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 7(1).
- 6 Ibid reg 7(1)(a). 'Approved' in relation to any premises means approved under the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205 (as amended), and 'approval' has a corresponding meaning: reg 2(1).
- 7 Ie examined for trichinae (*trichinella spiralis*).
- 8 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 7(1)(b). The appropriate treatment is that described in EC Council Directive 77/96 (OJ L26, 31.1.77, p 67) on the examination for trichinae (*trichinella spiralis*) upon importation from third countries of fresh meat derived from domestic swine (as amended): Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 7(1)(b).
- 9 Ibid reg 7(1)(c). The appropriate requirements are the conditions for the production of minced meat contained in reg 7(1)(c), Sch 4.
- 10 Ibid reg 7(1)(d). Checking must be carried out in accordance with the relevant provisions of reg 7(1)(d), Sch 6 para 1.
- 11 Ibid reg 7(1)(e). The health mark must be given and the meat must be labelled in accordance with the requirements of reg 7(1)(e), Sch 7. No person may affix the health mark to any minced meat which does not satisfy the requirements specified in heads (1)-(15) in the text: reg 7(4).
- 12 The requirements as to wrapping and packaging are contained in ibid reg 7(1)(f), Sch 8. For the meanings of 'wrapping' and 'packaging' see PARA 335 note 2 ante.
- 13 Ibid reg 7(1)(f). The requirements as to storage are contained in reg 7(1)(f), Sch 9.
- 14 Ibid reg 7(1)(g). The requirements as to transport are contained in Sch 10.
- 15 Ibid reg 7(1)(h). Transport documentation and, in certain circumstances, a health certificate, must accompany any minced meat and any meat preparation intended for consignment to a relevant EEA state: see reg 9, Schs 12, 14.
- 16 Ibid reg 7(1)(i). The permitted time is not more than 18 months in the case of beef or veal, 12 months in the case of sheep meat or goat meat and six months in the case of pig meat: see reg 7(1)(i). The boning of sheep meat and pig meat may have taken place immediately before mincing provided that this operation was carried out under hygienic conditions: reg 7(1)(i).
- 17 Ibid reg 7(1)(j).
- 18 'Cold treatment' means treatment by refrigeration: ibid reg 2(1).
- 19 Ibid reg 7(1)(k). There is an exception where processes were used requiring the lowering of the internal temperature of the meat during production: reg 7(1)(k).
- 20 Ibid reg 7(1)(l). A limited quantity of frozen meat as described in head (9) in the text may be added to the meat before mincing to accelerate the refrigeration process, provided that this addition is mentioned on the label and the cooling time referred to above does not exceed one hour: reg 7(1)(l).
- 21 Ibid reg 7(1)(m). As to the conditions relating to quick-frozen foods see the Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 3 Sch 1 para 1; and PARA 454 post.

- 22 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 7(1)(n).
- 23 Ibid reg 7(1)(o). The designated names and the requirements as to fat and collagen content are specified in reg 7(1)(o), Sch 11 para 1.
- 24 Ibid reg 7(3).
- 25 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.
- 26 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 7(2)(a). The requirements are contained in Schs 1, 3.
- 27 Ibid reg 7(2)(b). The conditions are contained in Sch 4, PARAS 1, 2, 6.
- 28 Ibid reg 7(2)(c). It must be checked in accordance with the relevant provisions of Sch 6 para 1.
- 29 Ie in accordance with the requirements of ibid Sch 8.
- 30 Ibid reg 7(2)(d). It must be stored in accordance with the requirements of Sch 9 paras 4, 5.
- 31 Ibid reg 7(2)(e). See note 23 supra.

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

335-338 Minced Meat and Meat Preparations

SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

336 Conditions for the marketing of minced meat

NOTE 21--SI 1990/2615 replaced: Quick-frozen Foodstuffs (England) Regulations 2007, SI 2007/191; Quick-frozen Foodstuffs (Wales) Regulations 2007, SI 2007/389.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/D. MINCED MEAT AND MEAT PREPARATIONS/337. General conditions for the marketing of meat preparations.

337. General conditions for the marketing of meat preparations.

No person may consign or sell for consignment to a relevant EEA state¹ for human consumption any meat preparation² unless the general conditions for the marketing of meat products have been complied with³. The conditions are:

- 236 (1) it has been produced in approved premises⁴;
- 237 (2) where it is derived from pig meat, such meat has been examined⁵ or has undergone the appropriate treatment⁶;
- 238 (3) where the meat from which it is derived has been deep frozen, such meat has been used within the permitted time⁷;
- 239 (4) where it is packaged and presented chilled, it has been cooled as quickly as reasonably possible to the prescribed internal temperature⁸;
- 240 (5) where it is packaged and presented deep frozen, it complies with the conditions as to quick-frozen foods⁹;
- 241 (6) it has been produced in accordance with the conditions for the production of meat preparations¹⁰;
- 242 (7) it has been checked¹¹;
- 243 (8) it has been labelled and given a health mark¹²;
- 244 (9) it has been wrapped and packaged¹³ and stored in a cold store¹⁴;
- 245 (10) it is transported in accordance with the prescribed requirements¹⁵; and
- 246 (11) it has not been treated by ionising radiation, save where this has taken place for medical purposes¹⁶.

No person is permitted to sell for human consumption in Great Britain¹⁷ any meat preparation produced in the United Kingdom¹⁸ unless:

- 247 (a) it has been produced in approved premises or in registered premises which comply with the requirements for producing minced meat or meat preparations¹⁹;
- 248 (b) it has been produced in accordance with the conditions for production of meat preparations²⁰;
- 249 (c) it has been checked²¹;
- 250 (d) it has been stored in a cold store²², or, where it is unpackaged, in a licensed cold store²³; and
- 251 (e) it has not been treated by ionising radiation save where this has taken place for medical purposes²⁴.

Heads (1) to (11) and (a) to (e) above do not apply to meat preparations originating in a relevant EEA state or a third country, save that such meat preparations must be handled and transported in accordance with the regulations relating to minced meat and meat preparations²⁵.

1 For the meaning of 'relevant EEA state' see PARA 335 note 6 ante.

2 For the meaning of 'meat preparation' see PARA 335 note 4 ante.

3 See the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 8. No person may consign or sell for consignment to a relevant EEA state for human consumption meat preparations containing pre-prepared minced meat of bovine animals, pigs, sheep or goats unless such minced meat satisfied the requirements of reg 7(1) (see PARA 336 ante), except that this does not apply to fresh sausage and sausage meat: reg 8(2).

4 Ibid reg 8(1)(a). For the meaning of 'approved' see PARA 336 note 6 ante; and for the meaning of 'premises' see PARA 335 note 1 ante.

5 le for trichinae (*trichinella spiralis*).

6 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 8(1)(b). The appropriate treatment is that described in EC Council Directive 77/96 (OJ L26, 31.1.77, p 67) on the examination for trichinae (*trichinella spiralis*) upon importation from third countries of fresh meat derived from domestic swine (as amended): Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 8(1)(b).

7 Ibid reg 8(1)(c). The permitted time is, in the case of beef and veal, 18 months of slaughter, in the case of sheep meat, goat meat, poultry meat, rabbit meat and farmed game meat, 12 months of slaughter and, in the case of other meat, six months of slaughter: see reg 8(1)(c).

8 Ibid reg 8(1)(d). The prescribed internal temperature is below 2° Celsius where it contains minced meat, 7° Celsius where it contains fresh meat, 4° Celsius where it contains poultry meat, and 3° Celsius where it contains offal: see reg 8(1)(d).

9 Ibid reg 8(1)(e). As to the conditions relating to quick-frozen foods see the Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 3, Sch 1 para 1; and PARA 454 post.

10 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 8(1)(f). The conditions are contained in reg 8(1)(f), Sch 5.

11 Ibid reg 8(1)(g). Checking must be carried out in accordance with the relevant provisions of reg 8(1)(g), Sch 6 para 1.

12 Ibid reg 8(1)(h). Health marks are given in accordance with the provisions of reg 8(1)(h), Sch 7. No person may affix the health mark to any minced meat which does not satisfy the requirements specified in heads (1)-(11) in the text: reg 8(5).

13 The requirements as to wrapping and packaging are contained in ibid reg 8(1)(i), Sch 8. For the meanings of 'wrapping' and 'packaging' see PARA 335 note 2 ante.

14 Ibid reg 8(1)(i). The requirements as to storage are contained in reg 8(1)(i), Sch 9.

15 Ibid reg 8(1)(j). The requirements as to transport are contained in reg 8(1)(j), Sch 10.

16 Ibid reg 8(1)(k).

17 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

18 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

19 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 8(3)(a). The requirements are contained in reg 8(3)(a), Schs 2, 3.

20 Ibid reg 8(3)(b). The conditions are contained in Sch 5 paras 1, 2(ii).

21 Ibid reg 8(3)(c). Checking must be carried out in accordance with the relevant provisions of Sch 6 para 1.

22 Storage must be carried out in accordance with the requirements of ibid Sch 9 paras 4, 5.

23 Ibid reg 8(3)(d).

24 Ibid reg 8(3)(e).

25 Ibid reg 8(4).

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

335-338 Minced Meat and Meat Preparations

SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

337 General conditions for the marketing of meat preparations

NOTE 9--SI 1990/2615 replaced: Quick-frozen Foodstuffs (England) Regulations 2007, SI 2007/191; Quick-frozen Foodstuffs (Wales) Regulations 2007, SI 2007/389.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/D. MINCED MEAT AND MEAT PREPARATIONS/338. Administration, penalties and enforcement.

338. Administration, penalties and enforcement.

Every food authority¹ has a duty to provide the Food Standards Agency² with such information relating to the execution of its duties under the regulations relating to minced meat³ and meat preparations⁴ as the Agency may from time to time require⁵.

The occupier⁶ of any premises must take all necessary measures to ensure that the regulations are complied with at all stages of production of minced meat or meat preparations and has a duty to carry out his own checks to ensure compliance⁷. The occupier must further ensure that: (1) each worker is given instruction and training with regard to hygiene matters⁸; (2) that the packaging of the products bears a clear and legible indication of the temperature at which the products may be transported and stored and a use-by date or minimum durability date⁹; and (3) that microbiological tests are conducted as required¹⁰.

In relation to combined premises¹¹ the Agency is responsible for the supervision of those premises and for enforcing and executing the regulations relating to minced meat and meat preparations in relation to those premises¹².

If (a) a person¹³ contravenes any provision relating to minced meat and meat preparations; or (b) the occupier of any premises fails to take all reasonable steps to secure the compliance by any person employed by him or any person admitted to those premises with any of those provisions, he is guilty of an offence¹⁴.

1 For the meaning of 'food authority' see PARA 335 note 10 ante.

2 As to the establishment of the Food Standards Agency see PARA 225 ante.

3 For the meaning of 'minced meat' see PARA 335 note 3 ante.

4 For the meaning of 'meat preparation' see PARA 335 note 4 ante.

5 Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 10.

6 For the meaning of 'occupier' see PARA 335 note 8 ante.

7 See the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 11(1).

8 Ibid reg 11(2)(a).

9 Ibid reg 11(2)(b). As to use-by dates and minimum durability dates see PARAS 384-387 post.

10 Ibid reg 11(2)(c). Microbiological tests must be carried out in accordance with reg 11(2)(c), Schs 11, 13.

11 For the meaning of 'combined premises' see PARA 335 note 10 ante.

12 See the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 12 (amended by SI 2000/225). The Agency may appoint authorised officers for this purpose: see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 12(2). Authorised officers have power in certain circumstances to prohibit the use of equipment or premises, impose conditions, or require the rate of operation to be reduced or stopped: see reg 12A (added by SI 2000/225).

13 Ie other than an approval authority or enforcement authority: see the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 13(1). For the meaning of 'approval authority' see PARA 335 note 10 ante. As to enforcement authorities see reg 12 (as amended).

14 Ibid reg 13(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 13(1). No prosecution for such an offence may commence after the expiry of: (1) three years from the commission of the offence; or (2) one year from its discovery by the prosecutor, whichever is the earlier: reg 13(2). As to the statutory maximum see PARA 261 note 23 ante.

The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 9 (inspection and seizure of suspected food) (see PARA 284 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Minced Meat and Meat Preparations (Hygiene) Regulations 1995, SI 1995/3205, reg 14.

UPDATE

328-338 Approval of meat products premises ... Administration, penalties and enforcement

See the Products of Animal Origin (Disease Control) (England) Regulations 2008, SI 2008/465 (amended by SI 2009/1297); and the Products of Animal Origin (Disease Control) (Wales) Regulations 2008, SI 2008/1275 (amended by SI 2009/1373, SI 2009/1910). As to fees for inspections of and controls on meat products see the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

335-338 Minced Meat and Meat Preparations

SI 1995/3205 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/E. MEAT HYGIENE APPEALS TRIBUNALS/339. Constitution and composition of meat hygiene appeals tribunals.

E. MEAT HYGIENE APPEALS TRIBUNALS

339. Constitution and composition of meat hygiene appeals tribunals.

Appeals against the refusal of licences in relation to meat hygiene are heard by the meat hygiene appeals tribunals¹.

Each tribunal consists of a chairman or a deputy chairman and two other members². The chairman or deputy chairman is required to be an independent person appointed by the Food Standards Agency³, one member must be a person nominated by the Royal College of Veterinary Surgeons (who may not be a member of the State Veterinary Service nor an official veterinary surgeon), and one member is required to be a person whom the Agency considers to be representative of the interests of the licensed premises⁴. Each tribunal may be serviced by a secretary and such other staff as the Agency may appoint, and the terms of appointment and the remuneration of the members, secretary and other staff of a tribunal are also determined by the Agency⁵.

At an appeal hearing, a tribunal is composed of such three members as the chairman or a deputy chairman may select⁶. Any appeal may, with the consent of the parties, be proceeded with in the absence of any one member of the tribunal other than the chairman⁷.

1 As to the procedure to be followed in hearings before a meat hygiene appeals tribunal see PARA 340 post.

2 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(2), Sch 21 para 1; Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 6(2), Sch 15 para 1; Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 5(2), Sch 12 para 1.

3 As to the establishment of the Food Standards Agency see PARA 225 ante.

4 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 21 para 2 (amended by SI 1995/3189; and SI 2000/656); Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Sch 15 para 2 (amended by SI 2000/656); Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, Sch 12 para 2 (amended by SI 2000/656).

5 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 21 paras 3, 4 (amended by SI 2000/656); Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Sch 15 paras 3, 4 (amended by SI 2000/656); Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, Sch 12 paras 3, 4 (amended by SI 2000/656).

6 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 14.

7 Ibid reg 15.

UPDATE

339 Constitution and composition of meat hygiene appeals tribunals

TEXT AND NOTES 2-7--SI 1992/2921, SI 1995/539, SI 1995/540, SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(ii) Meat Hygiene/E. MEAT HYGIENE APPEALS TRIBUNALS/340. Meat hygiene appeals tribunal procedure.

340. Meat hygiene appeals tribunal procedure.

Where the Food Standards Agency¹ has refused to license any premises for use as a slaughterhouse or as a wild game processing facility², or has granted a licence subject to conditions or has suspended or revoked the licence of any premises, the occupier of those premises may, within 21 days of being notified of the Agency's decision, appeal to a meat hygiene appeals tribunal³. Where a person appeals to the Agency, by notifying it in writing, against the refusal to license premises, the imposition of unacceptable conditions in the licence, the suspension of a licence, or the revocation of a licence, the Agency must refer the case to a tribunal for a determination⁴. For the purposes of hearing and determining cases, the tribunal may sit in such places and at such times as the chairman or a deputy chairman may direct⁵.

Where on such an appeal a tribunal determines that the grant of a licence should not have been refused, conditions have unreasonably been attached to a licence, a licence should not have been suspended, or a licence should not have been revoked, the Agency is required to give effect to the determination of the tribunal⁶.

The appellant must send or deliver to the secretary of the tribunal hearing the appeal four copies of all the further documentary evidence on which he intends to rely for the purposes of the appeal, although the tribunal may excuse an appellant from providing any document the production of which would be unreasonable on the grounds of expense or otherwise⁷.

The secretary of the tribunal must, with due regard to the convenience of the appellant, serve⁸ on the appellant a notice informing him of the time and place of the oral hearing of his appeal which, unless the appellant otherwise agrees, may not be earlier than 21 days after the date on which the notice is delivered or sent to him by post, and such notice must include, in a form approved by the chairman of the tribunal, guidance⁹ regarding the procedure which will apply to the hearing¹⁰.

When he receives the notice of the time and place of the hearing, the appellant must inform the tribunal whether or not he intends to attend or be represented at the hearing¹¹. If an appellant fails to attend or be represented at a hearing of which he has been duly notified, the tribunal hearing his appeal may, unless it is satisfied that there is sufficient reason for such absence, hear and determine the case in the appellant's absence, or adjourn the hearing¹².

The appellant is entitled to attend in person and to be represented by any person whom he may appoint for the purpose at any hearing of the appeal by the tribunal¹³. The chairman may give directions requiring the appellant or the Agency to provide such further particulars or supplementary statements as may be reasonably required for the full consideration of the appeal¹⁴. The time and place of any hearing may be altered and the hearing may be adjourned in certain circumstances¹⁵.

The following persons are entitled to attend the hearing: (1) the chairman or the deputy chairman or any member of the panel from which the tribunal is drawn, notwithstanding that they do not constitute the tribunal for the purpose of the hearing¹⁶; (2) a member of the Council on Tribunals¹⁷; and (3) an appointed representative of the Agency¹⁸. The hearing must be held in private unless the chairman, at his discretion, or the request of a party, requires that it, or part of it, be held in public¹⁹.

At the beginning of the hearing the chairman of the hearing is required to explain the order of proceedings which the tribunal proposes to adopt²⁰. The tribunal hearing an appeal must conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; and it must so far as appears to it appropriate, seek to avoid formality in its proceedings²¹. The tribunal must allow the appellant or his representative and the representative of the Agency to address it, give evidence and cross-examine witnesses²². The chairman and members of the tribunal hearing an appeal may put any questions to any witnesses called by or on behalf of the appellant (including the appellant himself if he gives evidence) or on behalf of the Agency²³. The tribunal may receive evidence of any fact which appears to it to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law²⁴. It may, if it is satisfied that it is just and reasonable to do so, permit an appellant to rely on grounds not stated in his appeal, written representations or in supporting documents²⁵. It may also require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form²⁶.

The determination of a tribunal hearing an appeal may be taken by a majority²⁷. The determination of the tribunal may be given orally at the end of the hearing but, in any event, must be recorded in a document which must also contain a statement of the reasons for such determination, which is required to be signed and dated by the chairman of the tribunal or deputy chairman²⁸. The secretary must send copies of the document recording the determination to the appellant, the Agency and the relevant local authority²⁹.

Any irregularity resulting from failure to comply with any provision relating to meat hygiene appeals tribunals or of any direction of the tribunal before it has reached its determination does not itself render the proceedings void³⁰.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 See under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, regs 4, 5 (both as amended) or reg 5A (as added and amended) (see PARA 478 post), the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, regs 4, 5 (both as amended) or reg 5A (as added and amended) (see PARA 530 post), or the Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 3 (as amended) or reg 4 (as amended) (see PARA 331 ante). As to slaughterhouses see PARA 470 et seq post.

3 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(1) (substituted by SI 2000/225; and amended by SI 2000/656); Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 6(1) (substituted by SI 2000/225; and amended by SI 2000/656); Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 5(1) (amended by SI 2000/656). As to the constitution and composition of the meat hygiene appeals tribunals see PARA 339 ante.

4 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 3(1) (amended by SI 2000/225; and SI 2000/656). The Agency must provide the tribunal with four copies of the appellant's notification of appeal and such other material as has been produced to or by the Agency which is or may be relevant to the appeal: Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 3(2) (amended by SI 2000/656).

5 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 13.

6 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(3) (substituted by SI 2000/225; and SI 2000/656); Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 6(3) (substituted by SI 2000/225; and amended by SI 2000/656); Wild Game Meat (Hygiene and Inspection) Regulations 1995, SI 1995/2148, reg 5(3) (amended by SI 2000/656).

7 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 4. Documents must be served on the secretary of the tribunal and the Agency in the specified manner: see reg 18(2), (5), (6) (amended by SI 2000/656).

8 Any document or thing required or authorised by the Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921 (as amended) to be sent or delivered to, or served on any person must be sent,

delivered or served on that person in the specified manner: see reg 18(1), (3), (4) (reg 18(1) amended by SI 2000/656).

9 The guidance set out by the secretary must include: (1) information in the form approved by the chairman as to attendance at the hearing, the bringing of documents, and the right of representation or assistance by another person; and (2) a statement of the right of the appellant to receive reasons in writing for the determination of the tribunal: Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 5(2).

10 Ibid reg 5(1).

11 Ibid reg 5(3). If the appellant does not intend to attend or be represented at the hearing, he may send to the secretary four copies of additional written representations in support of his appeal: reg 5(4).

12 Ibid reg 10.

13 Ibid reg 6.

14 Ibid reg 7 (amended by SI 2000/656).

15 See the Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 8 (amended by SI 2000/656).

16 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 9(1)(a).

17 Ibid reg 9(1)(b). As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq.

18 Ibid reg 9(1)(c) (amended by SI 2000/656).

19 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 9(2).

20 Ibid reg 11(1).

21 Ibid reg 11(2).

22 See ibid reg 11(3), (4) (reg 11(3) amended by SI 2000/656).

23 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 11(5) (amended by SI 2000/656).

24 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 11(6).

25 Ibid reg 11(7).

26 Ibid reg 11(8).

27 Ibid reg 12(1).

28 Ibid reg 12(2). Any document purporting to be a document duly signed or issued by the chairman or a deputy chairman or secretary, unless the contrary is proven, is deemed to be a document so signed or issued as the case may be: reg 17.

29 Ibid reg 12(3) (amended by SI 2000/656).

30 Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921, reg 16(1). Where any such irregularity comes to the attention of the tribunal hearing any appeal, the tribunal may, and must if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or to waive the irregularity before reaching its determination on the appeal: reg 16(2). Clerical mistakes in any document recording a direction or determination of a chairman hearing an appeal, or errors arising in such a document from an accidental slip or omission, may be corrected by such chairman by certificate under his hand: reg 16(3).

UPDATE

340 Meat hygiene appeals tribunal procedure

TEXT AND NOTES 1-3, 6--SI 1995/539, SI 1995/540, SI 1995/2148 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

TEXT AND NOTES 4-30--SI 1992/2921 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iii) Fish and Shellfish Hygiene/341. Production and placing on the market of live shellfish.

(iii) Fish and Shellfish Hygiene

341. Production and placing on the market of live shellfish.

Regulations are in force which regulate the production and placing on the market of live shellfish¹. No person is permitted to collect shellfish from a designated prohibited area² or a laying³ which is the subject of a temporary prohibition order⁴. No person may harvest, transport or relay any shellfish otherwise than in accordance with the prescribed processes⁵ if they are intended for placing on the market⁶ for human consumption⁷. No person is permitted to operate a dispatch⁸ or purification centre⁹ unless it has been approved by the food authority for the area in which the centre is situated¹⁰. A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are wrapped or repackaged must ensure that the wrapping or repackaging of such shellfish is in accordance with the applicable requirements¹¹. A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are stored or transported after they have left a dispatch or purification centre, must ensure that such shellfish are stored and transported in accordance with the applicable requirements¹². A person other than the final consumer who splits the contents of a consignment of live shellfish which are not wrapped in individual consumer-sized parcels must keep any health mark¹³ which is attached to the consignment, or a copy of any certificate¹⁴ which accompanied that consignment, for a period of not less than 60 days from the date of the splitting of the contents of that consignment¹⁵.

No person is permitted to place on the market for immediate human consumption any live shellfish, unless the requirements as to origin, harvesting, storing, transporting, relaying, handling, wrapping and labelling have been complied with¹⁶.

Direct transfers of live shellfish on local markets are exempt from some of these requirements¹⁷.

1. See the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994 (as amended); see the text and notes 2-17 infra; and PARAS 342-344 post. 'Shellfish' means only bivalve molluscs, echinoderms, tunicates and marine gastropods: reg 2(1). 'Bivalve molluscs' means filter-feeding lamellibranch molluscs: reg 2(1).

2. Areas must be designated as designated bivalve production areas: see *ibid* reg 3, Sch 2 Ch I. Areas may be designated as prohibited areas for live shellfish production: see reg 4 (amended by SI 2000/656). The designated areas may be altered: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 5 (amended by SI 2000/656). Lists of designated production and relaying areas must be published: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 6 (amended by SI 2000/656). 'Production area' means any sea, estuarine or lagoon area containing natural deposits of shellfish or sites used for the cultivation of shellfish (including relaying areas) from which live shellfish are taken: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 2(1). 'Relaying' means an operation by which live bivalve molluscs are transferred to a sea, lagoon or estuarine area in order to remove contamination, but does not include a transfer to an area more suitable for further growth or fattening; and 'relaying area' means any sea, lagoon or estuarine area with boundaries clearly marked and indicated by buoys, posts or any other fixed means which is used exclusively for the natural purification of live bivalve molluscs: reg 2(1).

3. 'Laying' means a foreshore, bed, pond, pit, ledge, float or similar place, including a relaying area, where live shellfish are liable to be gathered, harvested or deposited: *ibid* reg 2(1).

4 Ibid reg 8. If a food authority is satisfied that the consumption of live shellfish taken from a production area is likely to cause a risk to public health, it may make a temporary prohibition order prohibiting the collecting of any live shellfish from that area: see reg 7 (amended by SI 2000/656). 'Food authority' means: (1) with regard to England (a) as respects the Isles of Scilly, the Council of the Isles of Scilly; (b) as respects the City of London (including the Temples), the Common Council; (c) as respects any other part of England, if it is situated in a port health district, the port health authority for that district, or if it is not situated in a port health district, the London borough, district council or unitary authority in whose area that part is situated; and (2) as respects any part of Wales, if it is situated in a port health district, the port health authority for that district, or if it is not situated in a port health district, the county or county borough council in whose area that part is situated: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 2(1).

5 le in accordance with the requirements contained in ibid Sch 2 Chs II, III (amended by SI 1999/399; and SI 2000/656).

6 'Placing on the market' means, with regard to live shellfish, the holding or displaying for sale, offering for sale, selling, delivering or any other form of placing on the market of live shellfish for human consumption either raw or for the purposes of processing in the European Community, except for direct transfers on local markets of small quantities by coastal fishermen to retailers or consumers in the circumstances specified in the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 20 (see the text and note 17 infra): reg 2(1).

7 Ibid reg 9.

8 'Dispatch centre' means any on-shore or off-shore installation for the reception, conditioning, washing, cleaning, grading and wrapping of live shellfish fit for human consumption: ibid reg 2(1).

9 'Purification centre' means an establishment with tanks fed by naturally clean seawater or seawater which has been cleaned by appropriate treatment, in which live bivalve molluscs are placed for the time necessary to remove microbiological contamination, so making them fit for human consumption: ibid reg 2(1).

10 Ibid reg 10. Applications for the approval of dispatch and purification centres must be made to the food authority for the area in which the centre is situated: see reg 11 (amended by SI 2000/656). A person who is aggrieved by a decision taken by a food authority may appeal to a magistrates' court: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 12 (amended by SI 2000/656). Approvals for dispatch and purification centres may be varied or revoked in certain circumstances: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 14, 15 (reg 14 amended by SI 2000/656).

A food business proprietor who is operating a dispatch or purification centre at which live shellfish which are intended for placing on the market are handled must ensure that: (1) the requirements of the approval for his centre and of the applicable provisions of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Sch 2 Ch IV (amended by SI 1999/399; and SI 2000/656); (2) regular microbiological checks are carried out; and (3) the results of any checks are recorded in a historical record: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 13.

11 Ibid reg 16. The requirements are those set out in Sch 2 Ch VII.

12 Ibid reg 17. The requirements are those set out in Sch 2 Chs VIII, IX.

13 'Health mark' means a health mark which (as the context requires) is in accordance with: (1) ibid Sch 2 Ch X; (2) any law in force in another EEA State, Northern Ireland, the Isle of Man or the Channel Islands which is intended to give effect to the results to be achieved by EC Council Directive 91/492 (OJ L268, 24.9.91, p 1) laying down the health conditions for the production and the placing on the market of live bivalve molluscs, Annex Ch X; or (3) any approved import conditions for live shellfish: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 2(1).

14 le any certificate required in accordance with ibid reg 45(2): see PARA 343 post.

15 Ibid reg 18(1). A person who repackages a consignment of live shellfish must keep the original health mark (if one was required) which was attached to the consignment for a period of not less than 60 days from the date of the splitting of the contents of that consignment: see reg 18(2).

16 See ibid reg 19(1) (amended by SI 1999/399). There are certain exceptions from the requirements for imported live shellfish and repackaged shellfish from a country other than Great Britain: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 19(2)-(4).

17 See ibid reg 20 (amended by SI 1999/1585).

UPDATE

341-344 Fish and Shellfish Hygiene

SI 1998/994 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A. As to the collection of fees for inspections of and controls on fishery products see the Fishery Products (Official Controls Charges) (England) Regulations 2007, SI 2007/3392; and the Fishery Products (Official Controls Charges) (Wales) Regulations 2007, SI 2007/3462.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iii) Fish and Shellfish Hygiene/342. Production and placing on the market of fishery products.

342. Production and placing on the market of fishery products.

The production and placing on the market of fishery products¹ is controlled by regulations². A person operating a fishing vessel on board which shrimps or molluscs are, for the purposes of a food business, processed by cooking, unless such processing is to be supplemented subsequently by cooking, must register the vessel and comply with the requirements as to cooking³. Food business proprietors, ship owners and their representatives who are operating a fishing vessel on board which fishery products which are intended for placing on the market for human consumption are handled must ensure that the applicable hygiene provisions are complied with as respects their vessels⁴.

No person is permitted to operate a fishery products establishment unless it has been approved by the food authority⁵ for the area in which it is situated⁶. No person may operate a British Islands factory vessel⁷ unless it has been approved⁸. No person is permitted to operate an auction or wholesale market⁹ unless that market has been registered with the food authority in whose area it is situated¹⁰.

Food business proprietors operating establishments and factory vessels must comply with any requirements for approval and any applicable hygiene requirements¹¹. Any person who makes premises available for an auction or wholesale market at which fishery products which are intended for placing on the market for human consumption are handled must ensure that the applicable provisions are complied with as respects the market¹².

The master of a factory vessel of a country or territory which is not part of the European Economic Area, before landing any fishery products in Great Britain which are for placing on the market, must give the food authority for the port at which he intends to land those fishery products notice of arrival of at least 24 hours¹³.

The gutting, packaging, storage and transportation of fishery products must be carried out in accordance with the prescribed requirements¹⁴.

No person is permitted to place on the market¹⁵ for human consumption any fishery products unless the hygiene requirements for fishing vessels¹⁶ and fishery products¹⁷ have been complied with¹⁸. The sale of certain poisonous fish and toxic fishery products is prohibited¹⁹.

Transfers of small quantities of fishery products direct to retailers or final consumers in the United Kingdom are exempt from some of these requirements²⁰.

1 'Fishery products' means: (1) all seawater or freshwater animals, including their roes; and (2) parts of such animals, except in circumstances where they are combined (in whatever way) with other foodstuffs, and comprise less than 10% of the total weight of the combined foodstuffs, but excluding aquatic mammals, frogs and aquatic animals covered by Community acts other than EC Council Directive 91/493 (OJ L268, 24.9.91, p 15) laying down the health conditions for the production and placing on the market of fishery products (as amended), and parts of such mammals, frogs and aquatic animals: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 2(1).

2 Ie by the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994 (as amended): see the text and notes 3-20 infra; and PARAS 341 ante, 343-344 post.

3 See ibid reg 21, Sch 3 (amended by SI 1999/1585; and SI 2000/656).

4 See the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 22, Sch 4.

5 For the meaning of 'food authority' see PARA 341 note 4 ante.

6 See the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 23(1).

7 'Factory vessel' means any vessel on which fishery products undergo one or more of the operations of filleting, slicing, skinning, mincing, freezing or processing, followed by packaging, but the following are not deemed to be factory vessels: (1) fishing vessels in which only shrimps and molluscs are cooked on board; and (2) fishing vessels on board which only freezing is carried out: *ibid* reg 2(1). For the meaning of 'British Islands' see PARA 308 note 10 ante.

8 See *ibid* reg 23. An application for an approval for a factory vessel or fishery products establishment must be made to: (1) in the case of an establishment, the food authority in whose area the establishment is situated; and (2) in the case of a factory vessel, the food authority for the area which includes the place at which the vessel usually lands fishery products in Great Britain: see reg 24. For the meaning of 'Great Britain' see PARA 206 note 1 ante. A person aggrieved by the decision of the food authority may appeal to a magistrates' court: see reg 27. An approval may be varied or revoked in certain circumstances: see regs 31, 32.

9 'Auction or wholesale market' means any premises where the display and sale by wholesale of fishery products, but no other activities associated with the production and placing on the market of fishery products, takes place: *ibid* reg 2(1).

10 *Ibid* reg 25. An application for registration for an auction or wholesale market must be made to the food authority in whose area it is situated: see reg 26. A person aggrieved by the decision of the food authority may appeal to a magistrates' court: see reg 27. A market registration may be cancelled in certain circumstances: see reg 32.

11 See *ibid* reg 28, Sch 3.

12 See *ibid* reg 30 (substituted by SI 1999/1585). The applicable provisions are contained in the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 30, Sch 3 Chs II, III (amended by SI 1999/1585).

13 Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 2(1), 29.

14 See *ibid* regs 33, 34, 35, Sch 3 Chs VI, VIII.

15 'Placing on the market' means, with regard to fishery products, the holding or displaying for sale, offering for sale, selling, delivering or any other form of placing on the market in the European Community, except for: (1) retail sales (which includes retail sales to catering businesses and sales by catering businesses); and (2) direct transfers on local markets of small quantities by fishermen to retailers or consumers in the circumstances specified in *ibid* reg 41 (see the text and note 20 *infra*): reg 2(1).

16 *Ie* the requirements of *ibid* reg 36, Sch 4.

17 *Ie* the requirements of *ibid* Sch 3 (amended by SI 1999/1585; and SI 2000/656).

18 See the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 36. A person with control over the survival conditions of a fishery product for human consumption which is to be placed on the market alive must ensure that it is at all times kept under the most suitable survival conditions: reg 39. No person is permitted to place aquaculture products or processed shellfish on the market for human consumption unless the prescribed conditions have been complied with: see regs 37, 38 (amended by SI 1999/399). 'Aquaculture products' means: (1) all fishery products born and raised in controlled conditions until placed on the market as a foodstuff; and (2) all seawater fish, freshwater fish or crustaceans caught in their natural environment when juvenile and kept until they reach the desired commercial size for human consumption, other than fish or crustaceans of commercial size caught in their natural environment and kept alive to be sold at a later date, if they are merely kept alive without any attempt being made to increase their size or weight: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 2(1).

19 See *ibid* reg 40.

20 See *ibid* reg 41 (amended by SI 1999/1585). There is an exemption from the requirements of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 33-39 (as amended): see reg 41. A 'small quantity' means an amount which comprises part of the fisherman's annual allowance: see the reg 41(2). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

UPDATE

341-344 Fish and Shellfish Hygiene

SI 1998/994 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A. As to the collection of fees for inspections of and controls on fishery products see the Fishery Products (Official Controls Charges) (England) Regulations 2007, SI 2007/3392; and the Fishery Products (Official Controls Charges) (Wales) Regulations 2007, SI 2007/3462.

342 Production and placing on the market of fishery products

NOTES 3, 11, 17--SI 1998/994 Sch 3 Ch VII amended: SI 2004/2145 (England), SI 2004/2731 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iii) Fish and Shellfish Hygiene/343. Import conditions for fishery products and live shellfish.

343. Import conditions for fishery products and live shellfish.

No person is permitted to import any fishery products¹ which are for human consumption unless they are products in respect of which the applicable European legislation² and any additional conditions³ are satisfied⁴. It is also prohibited to import live shellfish⁵ which are for human consumption unless the applicable European legislation⁶ and any additional conditions⁷ are satisfied⁸.

These provisions do not apply to a person importing a private consignment⁹: (1) from a country or territory within the European Community, unless that consignment is a consignment of trade samples which weighs more than ten kilograms; or (2) from any other country or territory, if that consignment weighs one kilogram or less¹⁰.

1 For the meaning of 'fishery products' see PARA 342 note 1 ante.

2 I.e EC Council Directive 91/493 (OJ L268, 24.9.91, p 15) laying down the health conditions for the production and placing on the market of fishery products (as amended); EC Council Directive 92/48 (OJ L187, 7.7.92, p 41) laying down the minimum hygiene rules applicable to fishery products caught on board certain vessels; EC Council Directive 91/492 (OJ L268, 24.9.91, p 1) laying down the health conditions for the production and the placing on the market of live bivalve molluscs (as amended); EC Commission Decision 93/25 (OJ L16, 25.1.93, p 22) approving certain treatments to inhibit the development of pathogenic micro-organisms in bivalve molluscs and marine gastropods (as amended); EC Commission Decision 93/51 (OJ L13, 21.1.93, p 11) on the microbiological criteria applicable to the production of cooked crustaceans and molluscan shellfish; EC Commission Decision 93/140 (OJ L56, 9.3.93, p 42) laying down the detailed rules relating to the visual inspection for the purpose of detecting parasites in fishery products; EC Commission Decision 93/351 (OJ L144, 16.6.93, p 23) determining analysis methods, sampling plans and maximum limits for mercury in fishery products; EC Commission Decision 94/356 (OJ L156, 23.6.94, p 50) laying down detailed rules for the application of EC Council Directive 91/493 (OJ L268, 24.9.91, p 15) (as amended) as regards own health checks on fishery products; and EC Commission Decision 95/149 (OJ L97, 29.4.95, p 84) fixing the total volatile basic nitrogen (TVB-N) limit values for certain categories of fishery products and specifying the analysis methods to be used: Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 2(1), 42, Sch 1 Pts I, III.

3 As to the additional conditions see *ibid* reg 43.

4 *Ibid* reg 42.

5 For the meaning of 'shellfish' see PARA 341 note 1 ante.

6 I.e EC Council Directive 91/492 (OJ L268, 24.9.91, p 1) laying down the health conditions for the production and the placing on the market of live bivalve molluscs (as amended); or where appropriate, EC Commission Decision 96/77 (OJ L15, 20.1.96, p 46) establishing the conditions for the harvesting and processing of certain bivalve molluscs coming from areas where the paralytic shellfish poison exceeds the limit laid down by the Live Bivalve Molluscs Directive: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 2(1), 44.

7 As to the additional conditions see *ibid* reg 45.

8 See *ibid* reg 44.

9 'Private consignment' means a quantity of fishery products or live shellfish which is: (1) imported solely as trade samples; or (2) not being imported by way of trade, and which (a) forms part of a traveller's personal luggage; or (b) has been sent to a person, other than a body of persons corporate or unincorporate, in Great Britain: *ibid* reg 2(1). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

10 *Ibid* reg 46.

UPDATE

341-344 Fish and Shellfish Hygiene

SI 1998/994 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A. As to the collection of fees for inspections of and controls on fishery products see the Fishery Products (Official Controls Charges) (England) Regulations 2007, SI 2007/3392; and the Fishery Products (Official Controls Charges) (Wales) Regulations 2007, SI 2007/3462.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iii) Fish and Shellfish Hygiene/344. Enforcement and penalties.

344. Enforcement and penalties.

The Food Standards Agency¹ is required to perform certain functions in relation to public health control and monitoring of production of shellfish². Each food authority³ also has functions assigned to it to perform⁴. A food authority may certify any fishery products⁵ or live shellfish⁶ in respect of which any applicable requirements⁷ are not met as being a food or food source which fails to comply with the regulations relating to food safety in fishery products and live shellfish⁸. Any fishery products or live shellfish which are so certified as being a food or food source which fails to comply with the regulations may be treated for the purposes of the Food Safety Act 1990⁹ as failing to comply with food safety requirements¹⁰.

If a person contravenes any provision relating to the safety of fishery products and live shellfish¹¹ he is guilty of an offence¹².

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 52, Sch 2 Chs III, VI, Sch 3 Ch V (reg 52, Sch 2 Ch VI amended by SI 2000/656; and the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Sch 2 Ch III amended by SI 1999/399). Inspection charges may be made: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 42, Sch 4A (reg 47 substituted, and Sch 4A added by SI 1999/1585). As to the enforcement of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Pt IV (regs 42-46) (see PARA 343 ante) see reg 56 (amended by SI 2000/656).

3 For the meaning of 'food authority' see PARA 341 note 4 ante. As to food authorities see PARA 251 et seq ante.

4 See the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 52, Sch 2 Chs III (as amended: see note 2 supra), VI (as amended: see note 2 supra), Sch 3 Ch V (as amended: see note 2 supra).

5 For the meaning of 'fishery products' see PARA 342 note 1 ante.

6 For the meaning of 'shellfish' see PARA 341 note 1 ante.

7 Ie any requirements of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Pt II (regs 3-20) (as amended) (see PARA 341 ante) or Pt III (regs 21-41) (as amended) (see PARA 342 ante).

8 Ibid reg 57(1).

9 Ie the Food Safety Act 1990 s 9 (inspection and seizure of suspected food): see PARA 284 ante.

10 Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 57(2). For the law relating to food safety requirements see PARAS 283-284 ante.

11 Ie any provision of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, regs 8-10, 13, 16-19(1) (as amended), 21(1), (2), (4), 22(1)-(3), 23, 25, 28-30 (as substituted), 33-40 (reg 38 as amended): see PARAS 341-343 ante.

12 Ibid reg 53(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both: reg 53(2). As to the statutory maximum see PARA 261 note 23 ante. Any person who without reasonable cause, fails to give any person acting on behalf of a food authority any assistance or information which that person may reasonably require of him, or in purported compliance with any such requirement intentionally or recklessly furnishes information which is false or misleading in a material

particular, is guilty of an offence, and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 53(3). As to the standard scale see PARA 242 note 18 ante. A food authority in England or Wales may institute proceedings under reg 53(3): reg 53(4).

The presumptions and defences under the Food Safety Act 1990 s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 34 (time limit for prosecutions) (see PARA 459 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply for the purposes of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, Pts II (as amended), III (as amended): reg 55(1). The Food Safety Act 1990 s 6(3) (discharge of duties of food authorities) (as amended) (see PARA 252 ante), s 32 (powers of entry) (see PARA 261 ante) and s 58(1) (see PARA 206 ante) also apply: see the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, SI 1998/994, reg 55(2)-(4) (reg 55(2) amended by SI 2000/656).

UPDATE

341-344 Fish and Shellfish Hygiene

SI 1998/994 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A. As to the collection of fees for inspections of and controls on fishery products see the Fishery Products (Official Controls Charges) (England) Regulations 2007, SI 2007/3392; and the Fishery Products (Official Controls Charges) (Wales) Regulations 2007, SI 2007/3462.

344-345 Enforcement and penalties, Registration of production holdings and approval of dairy establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iv) Dairy Hygiene/345. Registration of production holdings and approval of dairy establishments.

(iv) Dairy Hygiene

345. Registration of production holdings and approval of dairy establishments.

No person is permitted to use any premises as a production holding¹ for the production of raw milk² unless those premises: (1) comply with the conditions for registration of production holdings³; and (2) are registered or deemed to be registered⁴. Application for registration is made by written application to the Food Standards Agency⁵, which must register the premises if it is satisfied that both the premises and the arrangements for use are adequate⁶. The Agency must allot a registration number to each registered production holding and keep a list of such production holdings⁷.

No person may use any premises as a dairy establishment⁸ unless those premises: (a) comply with the conditions for approval of dairy establishments⁹; and (b) are approved¹⁰. Application for approval is made in writing to the approving authority¹¹, which must approve the premises if it is satisfied that the premises and the arrangements for use are adequate for their intended purpose¹². The approving authority must allot an approval number to each dairy establishment and keep a list of those dairy establishments¹³.

The Agency or the approval authority has power to cancel or revoke a registration or approval¹⁴.

No person may despatch from any registered production holding or approved dairy establishment any raw milk or dairy products which do not comply with the regulations relating to dairy hygiene¹⁵. Nor may they despatch any raw milk or dairy products to another EEA state¹⁶, or any part of the British Islands¹⁷, from a production holding or dairy establishment which is not registered or approved¹⁸.

The regulations relating to dairy hygiene¹⁹ do not apply to any production holding or dairy establishment producing or handling dairy products exclusively for the consumption of the occupier, or to any dairy establishment handling dairy products exclusively for the supply by the occupier of that dairy establishment otherwise than on sale²⁰. Nor do they apply to the handling or sale of any dairy products in or from any catering establishment²¹ or shop premises²².

No person may import into England and Wales for sale for human consumption from a third country²³ any cows' milk or cream²⁴. No person may import into England and Wales for sale for human consumption from a third country any other dairy products unless they comply with the requirements as to imports²⁵.

There are also provisions governing the action to be taken in relation to infected milk²⁶.

1 'Production holding' means premises at which one or more milk-producing cows, ewes, goats or buffaloes are kept: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 2(1).

2 'Raw' in relation to milk means milk produced by the secretion of the mammary glands of one or more cows, ewes, goats or buffaloes, which has not been heated beyond 40° Celsius or undergone any treatment which has an equivalent effect: *ibid* reg 2(1). 'Milk' means the milk of cows, ewes, goats or buffaloes intended for human consumption: reg 2(1).

3 *Ibid* reg 4(1)(a). The conditions for registration of production holdings are contained in reg 4(1)(a), Sch 1 (amended by SI 1996/1699).

4 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(1)(b). Premises are registered in accordance with the provisions of reg 4 (as amended) and are deemed registered in accordance with reg 14.

5 See *ibid* reg 4(4) (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

6 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(3) (amended by SI 2000/656). The premises and arrangements for use are adequate if they comply with the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(3)(a) (as amended), Sch 1, Sch 7 paras 1, 2. The Agency must notify the applicant in writing of its decision: see reg 4(5) (amended by SI 2000/656). Any person aggrieved by a decision of the Agency may appeal to a magistrates' court: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(6) (amended by SI 2000/656). The Food Safety Act 1990 s 37(3)-(6) (see PARA 469 post) has effect in relation to an appeal under this regulation: see the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(7). Any registration granted in respect of any production holding under this provision is subject to the condition that any alteration to that production holding is to comply with the requirements of Sch 1 and Sch 7 paras 1, 2, if appropriate: reg 4(8).

Without prejudice to the Food Safety Act 1990 ss 9-12 (see PARAS 284-287 ante), where the Agency has refused a registration, a person who both prior to 9 May 1995 and immediately before such refusal had been lawfully using any premises for the production of raw milk, may continue to use such premises for that purpose, subject to any reasonable conditions imposed by the Agency for the protection of public health, until the time for appeal has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(9) (amended by SI 2000/656).

The Agency is entitled to inspect any premises in respect of which an application has been made to it to register such premises as a production holding, prior to registering those premises: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 4(10) (amended by SI 2000/656).

7 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 5(1) (amended by SI 2000/656). Any registered production holding which ceases to be used as a production holding must be removed from the list: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 5(2) (amended by SI 2000/656).

8 'Dairy establishment' means any undertaking handling dairy products and is either: (1) a standardisation centre; or (2) any one of a treatment establishment, a processing establishment, or a collection centre, operating alone or in combination: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 2(1). 'Handling' includes preparing, processing, packaging, treating, wrapping or rewrapping in the course of a business: reg 2(1). 'Processing' includes manufacturing as well as operations such as slicing: reg 2(1). 'Packaging' in relation to dairy products means the placing of one or more wrapped or unwrapped dairy products in a container, as well as the container itself: reg 2(1). 'Treatment' means heat-treatment or thermisation: reg 2(1). 'Wrapping' in relation to any dairy product means the protection of that dairy product by the use of an initial wrapping or initial container in direct contact with the product as well as the initial wrapper or initial container itself: reg 2(1). 'Dairy product' means any milk or any milk-based product: reg 2(1). 'Milk-based product' means: (a) a milk product exclusively derived from milk to which other substances necessary for its manufacture may have been added, provided that those substances do not replace in part or in whole any milk constituent; and (b) a composite milk product of which no part replaces or is intended to replace any milk constituent and of which milk or a milk product is an essential part either in terms of quantity or for characterisation of the product, intended for human consumption: reg 2(1). 'Standardisation centre' means an establishment which is not attached to a collection centre or to a treatment or processing establishment and where raw milk may be skimmed or its natural constituents modified: reg 2(1). 'Collection centre' means an establishment where raw milk is collected and where it may be cooled and filtered: reg 2(1). 'Processing establishment' means an establishment where any dairy product is either treated, processed and wrapped or undergoes one or more of those handling activities: *ibid* reg 2(1). 'Treatment establishment' means an establishment where milk is heat-treated: *ibid* reg 2(1).

9 *Ibid* reg 6(1)(a). The conditions for approval of dairy establishments are contained in reg 6(1)(a), Sch 2.

10 *Ibid* reg 6(1)(b) (amended by SI 1996/1699). Dairy establishments are approved in accordance with the provisions of the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 6 (as amended).

11 See *ibid* reg 6(4). 'Approving authority' means the food authority for the area within which a dairy establishment is situated: reg 2(1). As to food authorities see PARA 251 et seq ante.

12 See *ibid* reg 6(3). The premises and the arrangements for use must be adequate to comply with the applicable requirements of Sch 2. The approving authority must notify the applicant in writing of its decision: reg 6(5). Any person aggrieved by a decision of the authority may appeal to a magistrates' court: reg 6(6). The Food Safety Act 1990 s 37(3)-(6) has effect in relation to an appeal under this regulation: see the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 6(7). Any approval granted is subject to the condition that any alteration to the establishment complies with the requirements of Sch 2, if appropriate: reg 6(8).

The occupier of a dairy establishment producing less than 2 million litres of milk may apply for an approval even if the premises do not comply with all the hygiene requirements of Sch 2: see reg 6(9)-(9C) (reg 6(9) substituted and reg 6(9A)-(9C) added by SI 1996/1699).

Without prejudice to the Food Safety Act 1990 ss 9-12, where the approving authority has refused an approval, a person who both prior to 9 May 1995 and immediately before such refusal had been lawfully using any premises for the handling of dairy products, may continue to use such premises for that purpose, subject to any reasonable conditions imposed by the approving authority for the protection of public health, until the time for appeal has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 6(10).

The approving authority is entitled to inspect any premises in respect of which an application has been made to that authority for approval as a dairy establishment, prior to approving those premises: reg 6(11).

13 Ibid reg 7(1). Any approved dairy establishment which ceases to be used as a dairy establishment must be removed from the list: reg 7(2).

14 See ibid reg 8 (amended by SI 2000/656). Any person aggrieved by a cancellation or revocation may appeal to a magistrates' court: see the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 8(5).

15 See ibid regs 4(2)(a), 6(2)(a).

16 'EEA State' means a State which is a Contracting Party to the EEA Agreement but does not include Iceland: ibid reg 2(1) (definition substituted by SI 1996/1699). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (see EUROPEAN COMMUNITIES): Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 2(1).

17 For the meaning of 'British Islands' see PARA 308 note 10 ante.

18 See the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, regs 4(2)(b), 6(2)(b).

19 I.e. the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended).

20 See ibid reg 3(1).

21 'Catering establishment' means a restaurant, canteen, club, public house, school, hospital, institution or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer for immediate consumption without further preparation: ibid reg 2(1). 'Ultimate consumer' means any person who buys otherwise than: (1) for the purpose of re-sale; (2) for the purposes of a catering establishment; or (3) for the purposes of a manufacturing business: reg 2(1).

22 Ibid reg 3(2). See note 20 supra. 'Shop premises' means premises (including vehicles) from which any food is sold to the ultimate consumer: reg 2(1). However, certain provisions still apply to such establishments: see reg 3(3)-3(6) (reg 3(3) substituted by SI 1996/1699).

23 I.e. any country which is not an EEA state: see the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 2(1).

24 Ibid reg 22(1). 'Cream' means that part of cows' milk rich in fat which has been separated by skimming or otherwise: reg 2(1).

25 See ibid reg 22(2)-(5) (reg 22(4) amended and reg 22(4A) added by SI 1996/1699).

26 See the Milk and Dairies (General) Regulations 1959, SI 1959/277 (amended by SI 1982/1703; SI 1985/68; SI 1990/2486; SI 1992/3143; SI 1998/2424; and SI 2000/656).

UPDATE

344-345 Enforcement and penalties, Registration of production holdings and approval of dairy establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

345-347 Dairy Hygiene

SI 1995/1086 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

345 Registration of production holdings and approval of dairy establishments

TEXT AND NOTE 26--SI 1959/277 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iv) Dairy Hygiene/346. Conditions for the handling and marketing of dairy products.

346. Conditions for the handling and marketing of dairy products.

No person is permitted to sell for human consumption any raw milk¹, thermised milk², heat-treated drinking milk³, heat-treated milk for the manufacture of milk-based products⁴ or milk-based products unless it complies with the conditions for handling and marketing of dairy products⁵. The conditions are that:

- 252 (1) it originates from a registered production holding⁶ or an approved dairy establishment⁷ which complies with the appropriate requirements⁸;
- 253 (2) it complies with the requirements for raw milk⁹;
- 254 (3) the occupier of the dairy establishment has complied with his duties in connection with the re-sale of raw milk¹⁰;
- 255 (4) it complies with the appropriate conditions¹¹;
- 256 (5) it complies the applicable general conditions¹²; and
- 257 (6) it complies with the storage, transport, wrapping and labelling conditions¹³.

No person may sell any cows' milk to any catering establishment¹⁴ without heat-treatment of such milk¹⁵. No person may sell any thermised cows' milk to the ultimate consumer¹⁶ without heat-treatment of such milk¹⁷. No person may sell any ice-cream¹⁸ unless it is pasteurised ice-cream¹⁹ or it is sterilised ice-cream²⁰. Milk which does not satisfy the conditions relating to certain diseases²¹, may be sold for human consumption after it has been heat-treated²². In the case of any dairy products which have been handled in an infected area, they may be sold for human consumption if the milk used in the production of such dairy products has been heat-treated²³. There are exceptions from a number of the hygiene requirements for certain aged cheeses and milk-based products with traditional characteristics²⁴.

The methods of analysis and testing of dairy products are prescribed²⁵.

1 For the meanings of 'raw' and 'milk' see PARA 345 note 2 ante.

2 'Thermised milk' means milk which has been subjected to thermisation: Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 2(1).

3 'Heat-treated milk' means milk obtained by heat-treatment; and 'heat-treatment' means any treatment of a dairy product involving heating that causes, immediately after such treatment, a negative reaction to the phosphatase test and 'heat-treated' is to be construed accordingly: *ibid* reg 2(1).

4 For the meaning of 'milk-based product' see PARA 345 note 8 ante.

5 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 9(1).

6 For the meaning of 'production holding' see PARA 345 note 1 ante; and as to the registration of production holdings see PARA 345 ante.

7 For the meaning of 'dairy establishment' see PARA 345 note 8 ante; and as to the approval of dairy establishments see PARA 345 ante.

8 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 9(1)(a). The appropriate requirements are the conditions of hygiene set out in reg 9(1), Schs 1, 2.

9 *Ibid* reg 9(1)(b). The requirements for raw milk are contained in reg 9(1)(b), Sch 3.

10 Ibid reg 9(1)(c). The duties of the occupier are set out in reg 13.

11 In the case of raw drinking milk, the appropriate conditions are: (1) in the case of raw cows' milk, those specified in ibid reg 9(2), Sch 4 Pt I and reg 12 (restrictions on the sale of raw cows' milk as drinking milk); and (2) in the case of raw ewes' milk or raw goats' milk, those specified in Sch 4 Pt I para 2: reg 9(2).

In the case of thermised milk, the appropriate conditions to be complied with are that: (a) it is manufactured from raw milk which complies with the requirements of heads (1) to (3) in the text; and (b) where the thermised milk is intended for the manufacture of milk-based products, it complies with the requirements of reg 9(3)(b), Sch 5 Pt II: reg 9(3).

In the case of heat-treated drinking milk, the appropriate conditions to be complied with are, that: (i) it is manufactured from raw milk or thermised milk which complies with heads (1) to (3) in the text; or (ii) it is manufactured from other heat-treated drinking milk which complies with the appropriate requirements of Sch 4 Pt III; or (iii) it is manufactured from a mixture of the milk specified in heads (i) and (ii) supra: reg 9(4).

In the case of heat-treated milk intended for the manufacture of milk-based products, the appropriate conditions to be complied with are those specified in Sch 5 Pts III, IV: reg 9(5).

In the case of milk-based products, the appropriate conditions to be complied with are those specified in reg 9(6), Sch 6 (amended by SI 1996/1699) and it must be manufactured from: (A) raw milk or thermised milk which complies with heads (1) to (3) in the text and head (b) supra, as appropriate; (B) heat-treated drinking milk which complies with head (ii) supra; or (C) heat-treated milk (not being heat-treated drinking milk) which complies with the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 9(5): reg 9(6).

12 Ibid reg 9(1)(e). The applicable general conditions are reg 9(7)-(12), as applicable (see the text and notes 15-24 infra).

13 Ibid reg 9(1)(f). The storage, transport, wrapping and labelling conditions are those set out in reg 11. For the meaning of 'wrapping' see PARA 345 note 8 ante.

Dairy products intended for sale must: (1) be handled, stored and transported in accordance with reg 11(1), Schs 7, 8; (2) in the case of any heat-treated drinking milk or milk-based products transported in bulk, be accompanied during such transportation by a commercial document as specified in Sch 8 Pt III; (3) save as specified in reg 9(12), (13) (see the text and note 24 infra), be wrapped and packaged in accordance with the requirements of reg 11(1), Sch 9; and (4) subject to reg 11(4) and reg 15, be marked with a health mark and labelled in accordance with the appropriate requirements of reg 11(1), Sch 10: reg 11(1). For the meaning of 'handling' see PARA 345 note 8 ante. Any person who receives a consignment of dairy products together with the commercial document referred to in head (2) supra, must keep that document for a period of at least one year after the date of such receipt and make it available for inspection at the request of an authorised officer: reg 11(2). No person is permitted to use on any dairy product which has not been produced in accordance with the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended) any mark which is not a health mark but which resembles a health mark in such a way as to be likely to suggest that the product has been produced in accordance with those regulations: reg 11(3).

14 For the meaning of 'catering establishment' see PARA 345 note 21 ante.

15 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 9(7).

16 For the meaning of 'ultimate consumer' see PARA 345 note 21 ante.

17 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 9(8).

18 'Ice-cream' means any ice-cream which is a milk-based product: ibid reg 2(1). In relation to ice-cream which is not a milk-based product see the Ice-Cream (Heat Treatment etc) Regulations 1959, SI 1959/734 (amended by the Food and Drugs (Amendment) Act 1982 s 6; SI 1963/1083; SI 1982/1727; SI 1990/2486; SI 1995/1086; SI 1995/1763; and by virtue of the Criminal Justice Act 1988 s 51).

19 Ie which complies with the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, Sch 6 Pt V.

20 Ibid reg 9(9). Sterilised ice-cream must comply with Sch 6 Pt VI.

21 Ie ibid Sch 3 Pt II para 2(a), (c).

22 Ibid reg 9(10).

23 Ibid reg 9(11).

24 See ibid reg 9(12), (13).

25 See *ibid* reg 10, Sch 11 (amended by SI 1996/1699).

UPDATE

345-347 Dairy Hygiene

SI 1995/1086 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

346 Conditions for the handling and marketing of dairy products

NOTE 18--SI 1959/734 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(iv) Dairy Hygiene/347. Enforcement, supervision and penalties.

347. Enforcement, supervision and penalties.

Each approving authority¹ has a duty to enforce and execute the regulations relating to dairy hygiene² within its area³. The Food Standards Agency⁴ has a duty to enforce and execute the regulations in so far as they relate to the registration or cancellation of registration of any production holding⁵, and the provisions relating to drinking milk which is raw cows' milk⁶. For these purposes, each approving authority must carry out in relation to any dairy establishment⁷, and the Agency must carry out in relation to any production holding or farm premises, such inspection and supervision of and any sampling, analysis and examination of any dairy products or raw cows' milk which is drinking milk as the authority or the Agency may consider necessary to ensure that the requirements of the regulations are complied with⁸.

If (1) a person⁹ contravenes any provision of the regulations relating to dairy hygiene¹⁰; or (2) the occupier of any production holding or dairy establishment fails to take all reasonable steps to secure the compliance with any provision of the regulations by any person employed by him or any person admitted to that production holding or dairy establishment¹¹, he is guilty of an offence¹².

1 For the meaning of 'approving authority' see PARA 345 note 11 ante.

2 I.e. the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended).

3 Ibid reg 16(1), which is expressed to be subject to reg 16(2). Each approving authority must provide the Food Standards Agency with such information relating to the execution of its duties as the Agency may require: reg 17 (amended by SI 2000/656). The approving authority may authorise certain derogations from the requirements of the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended): see reg 19. As to the establishment of the Food Standards Agency see PARA 225 ante.

4 See note 3 supra.

5 For the meaning of 'production holding' see PARA 345 note 1 ante.

6 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 16(2) (substituted by SI 1996/1699; and amended by SI 2000/656). The provisions relating to drinking milk which is raw cows' milk are contained in the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 12(2) and reg 9, Sch 4 Pt I para 2(b) (as amended). For the meanings of 'raw' and 'milk' see PARA 345 note 2 ante.

7 For the meaning of 'dairy establishment' see PARA 345 note 8 ante.

8 See the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 16(3), (4) (reg 16(3), (4) amended by SI 1996/1699; and the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 16(3) amended by SI 2000/656).

9 I.e. other than an authorised officer of an approving authority or an authorised officer authorised by the Agency.

10 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 18(1)(a) (amended by SI 2000/656).

11 Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 18(1)(b).

12 Ibid reg 18(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both: reg 18(1). As to the statutory maximum see PARA 261 note 23 ante. No prosecution for such an offence may commence after the expiry of: (1) three years from the commission of the offence; or (2) one year from its discovery by the prosecutor, whichever is the earlier: reg 18(2).

The presumptions and defences under the Food Safety Act 1990 s 2 (extended meaning of 'sale' etc) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply for the purposes of the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086 (as amended): reg 20(1). The Food Safety Act 1990 s 5(6) (as amended) (appointment of a person who is not an officer) (see PARA 253 ante), s 8(3) (which makes presumptions in the case of batches of food) and s 9 (inspection and seizure of suspected food) also apply: see the Dairy Products (Hygiene) Regulations 1995, SI 1995/1086, reg 20(2)-(4).

UPDATE

345-347 Dairy Hygiene

SI 1995/1086 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(5) SECTORAL HYGIENE/(v) Egg Hygiene/348. Ungraded eggs.

(v) Egg Hygiene

348. Ungraded eggs.

There are provisions in force which apply to the sale of eggs by retail¹ for human consumption by their producer on his own farm, in a local public market or by door to door selling, which eggs are not packed in accordance with the European regulations and in respect of which no use is made of any of the quality or weight gradings laid down by those regulations². No person may sell by retail any such egg which contains a crack visible without candling to the naked eye³.

If any person contravenes these provisions, he is guilty of an offence⁴.

Each food authority⁵ has a duty to enforce and execute these provisions in its district⁶.

1 'Sell by retail' means sell to a person buying otherwise than for the purpose of re-sale, but does not include selling to a caterer for the purposes of his catering business or to a manufacturer for the purposes of his manufacturing business: Ungraded Eggs (Hygiene) Regulations 1990, SI 1990/1323, reg 2. 'Sell' includes offer or agree to sell or expose for sale, and 'sale' is to be construed accordingly: reg 2.

2 Ibid reg 3. The European regulations are EC Council Regulation 2772/75 (OJ L282, 1.11.75, p 56) on marketing standards for eggs, arts 16-19: see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1121.

3 Ungraded Eggs (Hygiene) Regulations 1990, SI 1990/1323, reg 4.

4 Ibid reg 5(1). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding level 5 on the standard scale, and on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: reg 5(1). As to the standard scale see PARA 242 note 18 ante.

The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Ungraded Eggs (Hygiene) Regulations 1990, SI 1990/1323, reg 2A (added by SI 1990/2486).

5 'Food authority' means: (1) as respects any district or London borough, the council of the district or borough; (2) as respects the City of London, the Common Council; and (3) as respects the Inner Temple and the Middle Temple, the Sub-Treasurer and the Under Treasurer respectively: Ungraded Eggs (Hygiene) Regulations 1990, SI 1990/1323, reg 2 (definition added by SI 1990/2486). As to the Common Council of the City of London see LOCAL GOVERNMENT vol 69 (2009) PARA 35.

6 Ungraded Eggs (Hygiene) Regulations 1990, SI 1990/1323, reg 5(2) (amended by SI 1990/2486).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/349. Introduction.

(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES

349. Introduction.

Novel foods and ingredients are governed by the European Regulations¹ which have direct effect in English law. There are two main categories of novelty: (1) the use of existing substances as food or as ingredients in food which have not previously been used as such, at least within the member states of the European Union²; and (2) the creation of new or different substances, which did not previously exist, primarily by means of genetic modification³. The legislation relating to novel foods, and in particular to the use of genetically modified organisms in food, has addressed the issues of safety for human consumption⁴ and of the risk of injury to the environment⁵, and has also attempted to address the antipathy of many European consumers to genetic modification by requiring clear segregation of genetically modified products and clear labelling of such products⁶. Legislation has, on occasion, lagged behind the pace of scientific and technical development, with the consequence that the legislation is still somewhat piecemeal and inconsistent.

1 The EC Council and European Parliament Regulation 258/97 (OJ L43, 14.2.97, p 1) concerning novel foods and novel food ingredients; EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms (as amended); and EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15) on the labelling of foodstuffs and food ingredients containing additives and flavourings that have been genetically modified or have been produced from genetically modified organisms (as amended). For the meaning of 'novel foods and ingredients' see PARA 351 post.

2 As to the member states of the European Union see PARA 203 note 7 ante.

3 As to novel foods and ingredients see PARA 351 post.

4 See PARA 350 et seq post.

5 See PARA 350 et seq post. As to the release of genetically modified organisms into the environment see PARA 358 post.

6 See PARA 356 post.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First

Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

349 Introduction

NOTE 1--EC Council Regulation 1139/98 and EC Commission Regulation 50/2000 replaced by European Parliament and EC Council Regulation 1829/2003. See also the Genetically Modified Organisms (Transboundary Movements) (England) Regulations 2004, SI 2004/2692 (amended by SI 2008/2598), and the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005, SI 2005/1912, which implement European Parliament and EC Council Regulation 1946/2003 on transboundary movements of genetically modified organisms.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/350. Power to make regulations.

350. Power to make regulations.

The Secretary of State¹ may by regulations make provision for prohibiting: (1) the carrying out of commercial operations² with respect to novel foods³ or food sources⁴ from which such foods are intended to be derived, of any class specified in the regulations⁵; (2) the carrying out of such operations with respect to genetically modified food sources⁶, or foods derived from such food sources, of any class so specified⁷; or (3) the importation of any food of a class so specified⁸, and (in each case) for excluding from the prohibition any food or food source which is of a description⁹ specified by or under the regulations and, in the case of a prohibition on importation, is imported at an authorised place of entry¹⁰.

1 As to the Secretary of State see PARA 224 ante.

2 For the meaning of 'commercial operation' see PARA 241 note 11 ante.

3 'Novel food' means any food which has not previously been used for human consumption in Great Britain, or has been so used only to a very limited extent: Food Safety Act 1990 s 18(3). For the meaning of 'food' see PARA 201 ante. For the meaning of 'human consumption' see PARA 201 note 3 ante. For the meaning of 'Great Britain' see PARA 206 note 1 ante.

4 For the meaning of 'food sources' see PARA 201 ante.

5 Food Safety Act 1990 s 18(1)(a). As to class see s 53(4); and PARA 283 ante.

6 A food source is genetically modified if any of the genes or other genetic material in the food source: (1) has been modified by means of an artificial technique; or (2) is inherited or otherwise derived, through any number of replications, from genetic material which was so modified: *ibid* s 18(4). 'Artificial technique' does not include any technique which involves no more than, or no more than the assistance of, naturally occurring processes of reproduction, including selective breeding techniques or in vitro fertilisation: s 18(4).

7 *Ibid* s 18(1)(b).

8 *Ibid* s 18(1)(c).

9 'Description', in relation to food, includes any description of its origin or of the manner in which it is packed: *ibid* s 18(3). As to description see s 53(4); and PARA 283 ante.

10 *Ibid* s 18(1). 'Authorised place of entry' means any port, aerodrome or other place of entry authorised by or under the regulations and in relation to food in a particular consignment, includes any place of entry so authorised for the importation of that consignment: s 18(3). In exercise of the power under s 18(1), the Secretary of State has made the Novel Foods and Novel Food Ingredients Regulations 1997, SI 1997/1335 (as amended) (see PARA 352 post); and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997, SI 1997/1336 (amended by SI 1999/1756; and SI 2000/656).

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations

2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

350 Power to make regulations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 10--See also the Kava-kava in Food (England) Regulations 2002, SI 2002/3169 (amended by SI 2004/455) (cf *R (on the application of National Association of Health Stores) v Secretary of State for Health* [2005] EWCA Civ 154, [2005] All ER (D) 324 (Feb)); the Kava-kava in Food (Wales) Regulations 2006, SI 2006/1851; the Genetically Modified Food (England) Regulations 2004, SI 2004/2335; and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/351. Novel foods and ingredients.

351. Novel foods and ingredients.

Novel foods and ingredients governed by the principal European Regulation¹ are those which had not, prior to 15 December 1997², been used for human consumption to a significant degree within the European community and which fall within one of the following categories³:

- 258 (1) foods and ingredients containing or consisting of genetically modified organisms⁴;
- 259 (2) food and ingredients produced from, but not containing, genetically modified organisms⁵;
- 260 (3) foods and ingredients with a new or intentionally modified primary molecular structure⁶;
- 261 (4) foods and ingredients consisting of or isolated from micro-organisms, fungi or algae⁷;
- 262 (5) foods and ingredients consisting of or isolated from plants and food ingredients isolated from animals, except for foods and food ingredients obtained by traditional propagating or breeding practices and having a history of safe food use⁸;
- 263 (6) foods and food ingredients to which has been applied a production process not currently⁹ used, where that process gives rise to significant changes in the composition or structure of the foods or food ingredients which affect their nutritional value, metabolism or level of undesirable substances¹⁰.

Where necessary the question of whether or not a type of food or ingredient falls within this definition is to be determined by a procedure where the European Commission is assisted by the Standing Committee for Foodstuffs¹¹. The European Regulation does not apply to food additives, flavourings or extraction solvents¹².

Novel food and ingredients must not present a danger for the consumer, mislead the consumer, or differ from foods or ingredients which they are intended to replace to such an extent that their normal consumption would be nutritionally disadvantageous for the consumer¹³.

1 EC Council and European Parliament Regulation 258/97 (OJ L43, 14.2.97, p 1) concerning novel foods and novel food ingredients. See also PARA 349 ante.

2 Ie the date EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) came into force.

3 Ibid art 1.2.

4 Ibid art 1.2(a). This applies to genetically modified organisms within the meaning of EC Council Directive 90/220 (OJ L117, 8.5.90, p 15) (amended by EC Commission Directive 94/15 (OJ L103, 22.4.94, p 20); and EC Commission Directive 97/35 (OJ L169, 27.6.97, p 72)): see EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 1.2(a). What is meant by the presence of a genetically modified organism is not defined by the regulation. However, the Commission Regulation as to the labelling of foods containing additives and flavourings that have been genetically modified or have been produced with genetically modified organisms (ie EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15)) contains a recital to the effect that the presence of protein or DNA resulting from genetic modification is the best criterion. Further, in EC Commission Regulation 1139/98 (OJ L159, 3.6.98, p 4) which makes provision for genetically modified maize and genetically modified soya, specific labelling requirements for those crops do not apply where neither protein nor DNA resulting from genetic modification is present in the food or its ingredients. It appears that in practice, in the current state of

knowledge, if genetically modified protein or genetically modified DNA cannot be demonstrated in the food product, it is impossible to prove that the product has been made from a genetically modified organism.

5 EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 1.2(b). Presumably this is a reference to genetically modified organisms within the meaning of EC Council Directive 90/220 (OJ L117, 8.5.90, p 15) (as amended) (see note 4 supra), although this is not specified in EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1), art 1.2(b).

6 EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 1.2(c).

7 Ibid art 1.2(d).

8 Ibid art 1.2(e).

9 It is submitted that 'currently' means one of the following dates: 27 January 1997 (the date EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) was made); 16 September 1997 (the date the Regulation was published in the Official Journal of the European Community); or 15 December 1997 (the date the Regulation came into force).

10 Ibid art 1.2(f).

11 Ibid art 1.3. The Standing Committee for Foodstuffs was set up by EC Decision 69/414 (OJ L291, 19.11.69, p 9) and consists of representatives of the member states with a representative of the European Commission as chairman. As to the procedure to be followed see EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 13. Genetically modified additives and flavourings are dealt with by separate legislation: see PARA 354 post.

12 Ibid art 2.1. For these purposes, 'food additives' has the same meaning as in EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) and comprises sweeteners, colours and miscellaneous additives as defined in the Sweeteners in Food Regulations 1995, SI 1995/3123 (as amended) (see PARA 367 post); the Colours in Food Regulations 1995, SI 1995/3124 (as amended) (see PARA 366 post); and the Miscellaneous Food Additives Regulations 1995, SI 1995/3187 (as amended) (see PARA 368 post). For these purposes, 'flavourings' has the same meaning as in EC Council Directive 88/388 (OJ L184, 15.7.88, p 61) which is implemented in the United Kingdom by the Flavourings in Food Regulations 1992, SI 1992/1971 (as amended): see PARA 369 post. For these purposes, 'extraction solvents' has the same meaning as in EC Council Directive 88/344 (OJ L157, 24.6.88, p 28) which is implemented in the United Kingdom by the Extraction Solvents in Food Regulations 1993, SI 1993/1658 (as amended): see PARA 370 post. The exclusion of additives, flavourings and extraction solvents is dependant upon certain safety levels: see EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) arts 2.2, 2.3.

13 Ibid art 3.1.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products

from China (Restriction on First Placing on the Market (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

351 Novel foods and ingredients

NOTES 4, 5--EC Council Regulation 258/97 art 1.2(a), (b) repealed by European Parliament and EC Council Regulation 1829/2003. See also European Parliament and EC Council Directive 2001/18 as supplemented by EC Commission Decisions 2002/623 and 2003/701, and amended by European Parliament and EC Council Regulation 1830/2003. Regulation 1830/2003 is implemented by the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914.

TEXT AND NOTE 11--EC Council Decision 69/414 repealed and Standing Committee for Foodstuffs replaced by Standing Committee on the Food Chain and Animal Health: see European Parliament and EC Council Regulation 178/2002 (as amended by European Parliament and EC Council Regulation 1642/2003 (OJ L245, 29.9.2003, p 4), EC Commission Regulations 575/2006 (OJ L100, 8.4.2006 p 3), 2002/2008 (OJ L60, 5.3.2008, p 17).

TEXT AND NOTE 12--EC Council Regulation 258/97 art 2.1 amended by European Parliament and EC Council Regulation 1332/2008 on food enzymes (OJ L354, 31.12.2008, p 7) art 23, in order to exclude food enzymes from the scope of Regulation 258/97, see PARA 370A. As to food enzymes see now the Food Enzymes Regulations 2009, SI 2009/3235, and the Food Enzymes (Wales) Regulations 2009, SI 2009/3377 which enforce Regulation 1332/2008 in relation to England and Wales respectively.

NOTE 12--From 20 January 2010, EC Council Directive 89/107 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details of phased implementation see art 33. SI 1995/3123, SI 1995/3124, and SI 1995/3187 replaced with amendments: Food Additives (England) Regulations 2009, SI 2009/3238; Food Additives (Wales) Regulations 2009, SI 2009/3378. From 20 January 2011, EC Council Directive 88/388 replaced by European Parliament and EC Council Regulation 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p 34); references to the repealed directive should be construed as references to Regulation 1334/2008: art 24.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/352. Pre-market approval.

352. Pre-market approval.

Before novel foods or ingredients¹ are placed on the market in the European Community, certain procedures must be followed². The person responsible for placing the novel foods or ingredients on the European Community market must submit a request to the food assessment body of the member state in which the product is to be placed on the market for the first time³. At the same time, he must forward a copy of the request to the European Commission⁴. In England the food assessment body is the Food Standards Agency acting jointly with the Secretary of State for Health⁵. After the request has been submitted, an initial assessment⁶ must then be carried out⁷. The relevant member state⁸ must follow the correct procedure⁹ and inform the applicant without delay: (1) that he may place the food or food ingredient on the market, where no additional assessment¹⁰ is required, and no reasoned objection has been presented¹¹; or (2) that an authorisation decision is required¹².

If either the initial assessment is that an additional assessment is required¹³ or there is an objection from any other member state then an authorisation decision must to be taken by the European Commission assisted by the Standing Committee for Foodstuffs¹⁴. The decision of the Commission must define the scope of the authorisation and establish, where appropriate, the conditions of use and designation of the food or ingredient, and specific labelling requirements¹⁵.

The essence of the assessment is a test of substantial equivalence¹⁶ to other existing foods and ingredients. If the food or ingredient is substantially equivalent to another existing food or ingredient then no wholesomeness testing is required whereas if the food or ingredient is not substantially equivalent to an existing food or ingredient then a full safety assessment will be required¹⁷.

There is an alternative to pre-market approval in relation to novel foods or ingredients falling within certain categories¹⁸. In such cases the alternative is available if, on the basis of the scientific evidence available and generally recognised or on the basis of an opinion delivered by one of the assessment bodies, the food or food ingredient is substantially equivalent to existing foods or ingredients as regards composition, nutritional value, metabolism, intended use and the level of undesirable substances contained¹⁹. Under the alternative procedure the person placing the food or ingredient into the market need not have prior approval but may instead notify the European Commission at the time of placing it on the market²⁰.

1 For the meaning of 'novel foods or ingredients' see PARA 351 ante.

2 See EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 3.2. The procedures to be followed are laid down in arts 4, 6, 7 and 8, and they apply on the basis of the criteria defined in art 3.1 (see PARA 351 ante): art 3.2. However, art 3.2 does not apply to the foods and food ingredients referred to in art 1.2(b) (see PARA 351 ante) where the genetically modified organism used in the production of the food or food ingredient has been placed on the market in accordance with EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1): art 3.3.

3 Ibid art 4.1. This request must contain all necessary information: see art 6.1.

4 Ibid art 4.1.

5 Novel Foods and Novel Food Ingredients Regulations 1997, SI 1997/1335, reg 3 (substituted by SI 1999/1756; amended by virtue of the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 7, Sch 5 para 5; and amended by SI 2000/656). In relation to Wales, where placing on the market for the first time, any request must be submitted for processing to the National Assembly for Wales who are the food assessment body in Wales for the purposes of the Novel Foods and Novel Food Ingredients Regulations

1997, SI 1997/1335 (as amended): reg 3(1) (as so substituted and amended). As to the establishment of the Food Standards Agency see PARA 225 ante. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ie as provided for in EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 6. The initial assessment is the responsibility of the member state referred to in art 4.1 (see art 6.2) and must be drawn up within a period of three months from receipt of a request meeting the conditions given in art 6.1 (see art 6.3). The initial assessment report must decide whether or not the food or food ingredient requires additional assessment in accordance with art 7: art 6.3.

7 Ibid art 4.2.

8 Ie the member state referred to in ibid art 4.1: see notes 3-4 supra.

9 Ie the procedure referred to in ibid art 6.4.

10 Ie the additional assessment referred to in ibid art 6.3: see note 6 supra.

11 Ibid art 4.2. Any reasoned objection must have been presented in accordance with art 6.4: art 4.2.

12 Ibid art 4.2. As to authorisation decisions see art 7.

13 Ie in accordance with ibid art 6.3.

14 See ibid arts 7.1, 13. As to the Standing Committee for Foodstuffs see PARA 351 note 11 ante.

15 Ibid art 7.2. The Commission must without delay inform the applicant of the decision taken: art 7.3. Decisions must be published in the Official Journal of the European Communities: art 7.3.

16 The principles are set out in guidelines prepared by the EC Scientific Committee for Food: EC Commission Recommendation 97/618 (OJ L253, 16.9.97, p 1).

17 See note 16 supra.

18 See EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) arts 3.4, 5. The relevant foods or food ingredients are those referred to in art 1.2(b), (d), (e) (see PARA 351 ante): art 3.4.

19 See ibid arts 3.4, 5.

20 See ibid arts 3.4, 5.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing

on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

352 Pre-market approval

NOTE 5--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/353. Labelling.

353. Labelling.

In addition to the generally applicable laws relating to the labelling of food¹, there are special requirements in relation to certain novel foods and certain novel ingredients². There are also special rules for genetically modified additives³ and for genetically modified maize and soya⁴. As regards novel foods and ingredients that fall within the European Regulation Concerning Novel Foods and Novel Food Ingredients, the labelling must inform the final consumer of:

- 264 (1) the presence in any novel food or ingredient of material which is not present in an existing equivalent foodstuff which may have implications for health of certain sections of the population⁵;
- 265 (2) the presence in a novel food or food ingredient of material which is not present in an existing equivalent foodstuff and which gives rise to ethical concerns⁶;
- 266 (3) any characteristic or food property such as composition, nutritional value or nutritional effects, or intended use of the food which renders a novel food or ingredient no longer equivalent to an existing food or ingredient⁷;
- 267 (4) the presence of a genetically modified organism⁸.

In the absence of an existing food or food ingredient, appropriate provisions must be adopted where necessary in order to ensure that consumers are adequately informed of the nature of the food or food ingredient⁹.

Detailed rules to implement the labelling requirements¹⁰ may be adopted by the European Commission with the assistance of the Standing Committee for Foodstuffs¹¹.

1 See PARA 373 et seq post.

2 It is laid down by EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1): see the text and notes 5-11 infra. As to the categories of food which come under the Regulation see PARA 351 heads (1)-(6) ante. For the meaning of 'novel food or food ingredient' see PARA 351 ante. At present there is no detailed law as to the manner of labelling, the only obligation is a general one to ensure by labelling that the final consumer is informed: see EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 8; and notes 5-11 infra. It is likely that this will be assessed with reference to general requirements as to prominence and intelligibility for food labelling. The general law on the prominence and intelligibility of labelling is contained in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended), which is implemented in the United Kingdom by the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARAS 402-406 post.

3 See PARAS 354, 356 post.

4 See PARAS 355-356 post.

5 EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 8.1(b). An example might be a food with an allergenic potential.

6 Ibid art 8.1(c). An example might be a plant-based foodstuff containing genes from animals.

7 Ibid art 8.1(a). A novel food or ingredient is deemed to be no longer equivalent to an existing food or ingredient for the purposes of art 8 if scientific assessment, based upon an appropriate analysis of existing data, can demonstrate that the characteristics assessed are different in comparison with a conventional food or food ingredient, having regard to the accepted limits of natural variations for such characteristics: art 8.1(a). The labelling must indicate the characteristics or properties which are modified together with the method by which that characteristic or property was obtained: art 8.1(a).

8 Ibid art 8.1(d). A non-exhaustive list of the techniques of genetic modification falling within this category is set out in EC Council Directive 90/220/EC (OJ L117, 8.5.90, p 15) Annex 1A, Pt 1: see EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 8.1(d). It should be noted that in relation to head (4) in the text, there is no express reference that restricts the category to novel foods or ingredients as defined in EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1). It is arguable, therefore, that this requirement applies to genetically modified organisms which do not fall within that definition because they were being used to a substantial degree for human consumption prior to the Regulation. There are two such organisms: a strain of genetically modified maize and a strain of genetically modified soya. However, EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended) (see PARAS 355-356 post) is concerned with these two organisms and would appear to supplant any requirement imposed by EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1).

9 Ibid art 8.2. This suggests an intention to adopt further legislation. In the absence of such provisions it is submitted that if there is no existing equivalent foodstuff with which a potentially novel food or ingredient can be compared, then the food or ingredient must be considered to contain material which is not present in an existing equivalent foodstuff.

10 Ie the labelling requirements of ibid art 8: see notes 5-8 supra, note 11 infra.

11 See ibid arts 8.3, 13. As to the Standing Committee for Foodstuffs see PARA 351 note 11 ante.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

353 Labelling

TEXT AND NOTE 8--EC Council Regulation 258/97 art 8.1(d) repealed by European Parliament and EC Council Regulation 1829/2003. See also European Parliament and EC Council Directive 2001/18 as supplemented by EC Commission Decisions 2002/623 and 2003/701, and amended by European Parliament and EC Council Regulation 1830/2003. Regulation 1830/2003 is implemented by the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/354. Labelling of genetically modified additives.

354. Labelling of genetically modified additives.

The European Commission Regulation on the labelling of foodstuffs and food ingredients containing additives and flavourings that have been genetically modified or have been produced from genetically modified organisms¹ provides for specific additional labelling requirements for food and food ingredients intended for final consumers and mass caterers ('specified foodstuffs') containing either additives or flavourings, or additives and flavourings ('specified additives and flavourings')². In England, the Regulation is supplemented by statutory instrument³. The labelling requirements are similar to those which apply to novel foods and novel food ingredients⁴.

Without prejudice to the other requirements of Community legislation on food labelling⁵, the labelling of specified foodstuffs must inform final consumers and mass caterers of:

- 268 (1) any characteristic or food property (such as composition, nutritional value or nutritional effects, intended use of the additives or flavourings) as a result of which the specified additives or flavourings are no longer equivalent to existing additives or flavourings⁶, in the prescribed manner⁷;
- 269 (2) the presence in the specified additives or flavourings of material which is not present in existing equivalent additives or flavourings and which may affect the health of certain sections of the population⁸;
- 270 (3) the presence in the specified additives or flavourings of material which is not present in existing equivalent additives or flavourings and which gives rise to ethical concerns⁹;
- 271 (4) the presence of an additive or flavouring that is or contains an organism genetically modified by techniques of genetic modification¹⁰, in the prescribed manner¹¹.

There are further specific rules as to the manner of marking or labelling which also apply to the labelling of genetically modified soya and maize in food¹².

1 Ie EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15): see notes 2-11 infra.

2 Ibid art 1.1. Specified additives and flavourings are: (1) additives falling within the scope of EC Directive 89/107 (OJ L40, 11.2.89); and (2) flavourings for use in foodstuffs falling within the scope of EC Directive 88/388 (OJ L184, 15.7.88, p 61) which are, contain or are produced from genetically modified organisms within the meaning of EC Council Directive 90/220 (OJ L117, 8.5.90, p 15) (as amended): EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15), art 1.2. EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15) does not apply to specified foodstuffs lawfully manufactured and labelled in the European Community or lawfully imported into the Community and put into free circulation before the entry into force of EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15): art 5.

3 See the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768; and PARAS 356-357 post.

4 As to the labelling of novel foods and novel food ingredients, which may not necessarily be ones containing or produced from genetically modified organisms see PARA 353 ante.

5 See PARA 417 et seq post.

6 EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15), art 2(a). The specified additives and flavourings are deemed to be no longer equivalent within the meaning of art 2(a) if scientific assessment, based upon an appropriate analysis of existing data, can demonstrate that the characteristics assessed are different in comparison with traditional additives or flavourings, having regard to the accepted limits of natural variations of such characteristics: art 3. This is conclusively the case where the additives or flavourings contain protein or DNA resulting from genetic modification: art 3. It is submitted that 'existing equivalent additives or flavourings' means those in use in the European Union at one of the following dates: 10 January 2000 (the date of adoption of the Regulation by the Commission); 11 January 2000 (the date of publication in the Official Journal); or 11 April 2000 (the date the regulation came into force).

7 The words 'Produced from genetically modified...' must appear in the list of ingredients provided for in EC Directive 79/112 (OJ L33, 8.2.79, p 1), art 6, in parentheses, immediately after the indication of the additive or the flavouring concerned or must be displayed prominently in a footnote to that list of ingredients and linked to the additive or flavouring concerned by an asterisk; and (in the case of a footnote) must be printed in a font that is at least of the same size as that used for the list of ingredients itself: EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15), arts 2(a), 4.1. For specified foodstuffs for which there is no list of ingredients, this wording must appear clearly on the product's label: art 4.1.

8 Ibid art 2(b).

9 Ibid art 2(c).

10 Ibid art 2(d). A non-exhaustive list of techniques of genetic modification is laid down in EC Directive 90/220 (OJ L117, 8.5.90, p 15), Annex IA, Pt 1: see EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15), art 2(d).

11 The words 'Genetically modified' must appear in the list of ingredients immediately after the indication of the additive or flavouring in question: ibid arts 2(d), 4.2. Alternatively, this wording may appear in a prominently displayed footnote under the list of ingredients, linked to the additive or flavouring concerned by an asterisk; and must be printed in a font which is of at least the same size as that used for the list of ingredients itself: art 4.2. For specified foodstuffs for which there is no list of ingredients, the wording must appear clearly on the product's label: art 4.2.

12 See PARA 356 post.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

354 Labelling of genetically modified additives

TEXT AND NOTES--EC Council Regulation 50/2000 replaced by European Parliament and EC Council Regulation 1829/2003. See also European Parliament and EC Council Directive 2001/18 as supplemented by EC Commission Decisions 2002/623 and 2003/701, and amended by European Parliament and EC Council Regulation 1830/2003. Regulation 1830/2003 is implemented by the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914.

NOTE 2--From 20 January 2010, EC Council Directive 89/107 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details of phased implementation see art 33. From 20 January 2011, EC Council Directive 88/388 replaced by European Parliament and EC Council Regulation 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p 34); references to the repealed directive should be construed as references to Regulation 1334/2008: art 24.

NOTE 3--SI 2000/768 revoked: SI 2004/2335.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/355. Genetically modified maize and soya.

355. Genetically modified maize and soya.

One strain of genetically modified soya bean¹ and one strain of genetically modified maize² were on the market in the European Community before the European Commission Regulation concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of certain particulars³, setting out labelling requirements, came into force⁴ and therefore are not subject to the labelling requirements. The Regulation was therefore amended by a later Regulation to impose labelling requirements on such soya bean and maize⁵. The labelling requirements⁶ do not apply to specified foodstuffs which are to be delivered as such to mass caterers which have been lawfully manufactured and labelled in the European Community, or which have been lawfully imported into the European Community and put into free circulation, before the entry into force of the relevant regulation⁷.

These labelling rules apply to foods and food ingredients which are to be delivered as such to the final consumer or mass caterers and which are produced in whole or in part from genetically modified soya beans or maize ('specified foodstuffs')⁸. Exempted from these rules are food additives, flavourings for use in foods and extraction solvents used in the production of certain foodstuffs⁹.

The specified foodstuffs are subject to the following additional specific labelling requirements¹⁰:

- 272 (1) where the food consists of more than one ingredient, the words 'Produced from genetically modified soya' or 'Produced from genetically modified maize', as appropriate, must appear in the list of ingredients¹¹, either in parentheses immediately after the name of the ingredient concerned, or in a prominently displayed footnote to the list of ingredients, related by means of an asterisk to the ingredient concerned; where an ingredient is already listed as being produced from soya or maize the words 'Produced from genetically modified' may be abbreviated to 'Genetically modified'; if the abbreviated form of words is used as a footnote, the asterisk must be directly attached to the word 'Soya' or 'Maize'; where either form of words is used as a footnote, it must have a typeface of at least the same size as the list of ingredients itself¹²;
- 273 (2) in the case of products for which no list of ingredients exists, the words 'Produced from genetically modified soya' or 'Produced from genetically modified maize', as appropriate, must appear clearly on the labelling of the food¹³;
- 274 (3) where an ingredient is designated by the name of a category¹⁴, that designation must be completed by the words 'Contains (ingredients to be specified) produced from genetically modified soya/genetically modified maize'¹⁵; and
- 275 (4) where an ingredient of a compound ingredient is derived from the specified foodstuffs, it must be mentioned in the list of ingredients of the final product, with the addition of the wording set out in head (2) above¹⁶.

However, the specified foodstuffs are not subject to the additional specific labelling requirements where:

- 276 (a) neither protein nor DNA resulting from genetic modification¹⁷ is present in their food ingredients individually considered or the food itself if it comprises a single ingredient¹⁸; and

277 (b) material derived from certain genetically modified organisms¹⁹ is present in their food ingredients or the food itself if it comprises a single ingredient in a proportion no higher than 1 per cent of the food ingredients individually considered or food comprising a single ingredient, provided this presence is adventitious²⁰.

1 le soya beans genetically modified for herbicide tolerance as described in EC Decision 96/281 (OJ L107, 30.4.96, p 10) (Glycine max L).

2 le maize genetically modified for insect tolerance as described in EC Decision 97/98 (OJ L31, 1.2.97, p 69) (Zea mays L).

3 le EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as originally enacted).

4 The EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as originally enacted) came into force 90 days after its publication in the Official Journal of the European Communities on 3 June 1998: art 5.

5 The amendments were made by EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13)).

6 le the labelling requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4): see PARA 351 et seq ante.

7 EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13), art 2.

8 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) art 1.1 (amended by EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13)).

9 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) art 1.2. The certain foodstuffs referred to in the text are those defined in EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) art 2.1: see EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 1.2. Additives and flavourings containing or produced from genetically modified organisms are governed by EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15): see PARA 354 ante.

10 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) art 2.1. Article 2 is without prejudice to the other requirements of European Community law concerning the labelling of foodstuffs: art 2.4.

11 le the list of ingredients provided for by EC Directive 79/112 (OJ L33, 8.2.79, p 1) art 6.

12 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) art 2.3(a).

13 Ibid art 2.3(b).

14 le in accordance with the provisions of EC Directive 79/112 (OJ L33, 8.2.79, p 1) art 6.5(b).

15 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 2.3(c).

16 Ibid art 2.3(d).

17 le genetic modification as specified in ibid art 1: see notes 8-9 supra.

18 Ibid art 2.2(a) (amended by EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13)). In order to facilitate the application of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 2.2(a), a non-exhaustive list of food ingredients or food comprising a single ingredient in which neither protein nor DNA resulting from the genetic modification as specified in art 1.1 (see note 8 supra) is present, must be drawn up under the procedure laid down in EC Directive 79/112 (OJ L33, 8.2.79, p 1), taking account of technical developments, the opinion of the Scientific Committee for Food and any other relevant scientific advice: EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 2.2A (added by EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13)). The Scientific Committee for Food was set up by EC Decision 74/234 (OJ L136, 20.5.74, p 1).

19 le the genetically modified organisms referred to in EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 1.1 (see note 8 supra), together with any material placed on the market pursuant to EC Regulation 258/97 (OJ L43, 14.2.97, p 1) derived from other genetically modified organisms.

20 EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 2.2(b) (amended by EC Commission Regulation 49/2000 (OJ L6, 11.1.2000, p 13)). In order to establish that the presence of such material is adventitious, operators must be in a position to supply evidence to satisfy the competent authorities that they have taken appropriate steps to avoid using the genetically modified organisms (or produce of) referred to in EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 1 (see notes 8-9 supra) as a source: art 2.2(b) (as so amended).

UPDATE**349-358 Novel Foods and Genetically Modified Sources**

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

355 Genetically modified maize and soya

TEXT AND NOTES--EC Council Regulation 1139/98 (as amended) and EC Commission Regulation 49/2000 replaced: see European Parliament and EC Council Regulation 1829/2003.

TEXT AND NOTES 3, 4--For 'European Commission Regulation concerning ... came into force' read 'European Parliament and Council Regulation concerning novel foods and novel ingredients came into force and therefore were not subject to the labelling requirements in that regulation'. The Parliament and Council Regulation referred to is European Parliament and EC Council Regulation 258/97, which came into force on 15 December 1997.

TEXT AND NOTE 5--For 'The Regulation ... soya bean and maize' read 'The European Council Regulation concerning the compulsory indication of labelling of certain foodstuffs produced from genetically modified organisms of certain particulars, which imposed labelling requirements on such soya bean and maize, was subsequently adopted'. The Council Regulation referred to is EC Council Regulation 1139/98 (amended by EC Commission Regulation 49/2000).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/356. Additional rules for the labelling of genetically modified additives and flavourings and genetically modified maize and soya.

356. Additional rules for the labelling of genetically modified additives and flavourings and genetically modified maize and soya.

There are detailed rules in United Kingdom legislation on the labelling of genetically modified additives and flavourings and genetically modified maize and soya¹. The labelling requirements are unusual in that they apply to nearly all circumstances in which food is supplied, including circumstances in which food labelling requirements are usually minimal². When any food, other than food to which the special rules³ apply, is sold, any particulars with which it is required to be marked or labelled⁴ must appear: (1) on the packaging; (2) on a label attached to the packaging; or (3) on a label which is clearly visible through the packaging, save that, where the sale is otherwise than to the final consumer, such particulars may, alternatively, appear only on the commercial documents relating to the food where it can be guaranteed that such documents, containing all such particulars, either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food⁵.

Special rules apply in relation to the marking or labelling of: (a) food which is not pre-packed⁶; (b) food which is pre-packed for direct sale⁷; and (c) any individually wrapped fancy confectionery product⁸ which is not enclosed in any further packaging and which is intended for sale as a single item⁹. When any such food is sold to the final consumer, any particulars with which it is required to be marked or labelled¹⁰ must, except as provided below¹¹, appear on a label attached to the food, or on a menu, notice, ticket or label which is readily discernible by an intending purchaser at the place where he chooses that food¹².

Alternative particulars may be given under the special rules in the case of food which is not prepacked, or is prepacked for direct sale and sold to the final consumer¹³ at appropriate premises¹⁴. In such a case, the provision of alternative particulars must not alone be treated as a contravention of the special labelling rules¹⁵. Such alternative particulars are provided if there appears on a menu, notice, ticket or label which is readily discernible by an intending purchaser and which is located at the place at the premises where he chooses that food¹⁶:

- 278 (i) in the case of food to which the labelling requirements relating to certain foodstuffs produced from genetically modified organisms¹⁷ apply, indications to the effect that some of the food sold at those premises contains ingredients produced from genetically modified soya beans or maize, or both, as the case may be, and that further information is available from the staff¹⁸; and
- 279 (ii) in the case of food to which the labelling requirements relating to foodstuffs and ingredients containing genetically modified additives and flavourings¹⁹ apply, indications to the effect that some of the food sold at those premises contains additives or flavourings, or both, as the case may be, produced from a genetically modified organism, and that further information is available from the staff²⁰.

The particulars with which a food is required to be marked or labelled²¹, or which appear on a menu, notice, ticket or label displayed at premises pursuant to the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000²², must be easy to understand, clearly legible and indelible and, when the food is sold to a final consumer, must be marked in a conspicuous place in such a way as to be easily visible²³. Such particulars must not be in any way hidden, obscured or interrupted by any other written or pictorial matter²⁴. This must not be

taken to preclude the giving of such particulars at mass caterers, in respect of foods the variety and type of which are changed regularly, by means of temporary media (including the use of chalk on a blackboard)²⁵.

1 See the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768; and notes 3-27 *infra*. As to maize and soya (but not additives) in relation to Wales see the Food Labelling Regulations 1996, SI 1996/1499 (as amended). As to offences, penalties and enforcement see PARA 357 post. It would appear that separate regulations are to be made for Wales by the National Assembly for Wales. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Subject to the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 3(2), the regulations do not apply in respect of any food brought into England from a member state (other than the United Kingdom), or from another part of the United Kingdom, in which it was lawfully sold, having been produced in a member state, or in which it was in free circulation and lawfully sold, if the requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, or EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15) on the labelling of foodstuffs and food ingredients containing additives and flavourings that have been genetically modified or have been produced from genetically modified food ingredients (as applicable), as read in each case with EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended), are met in respect of that food: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 3(1). Nothing in reg 3(1) prevents the enforcement of reg 7(c) (see PARA 357 post): reg 3(2). For these purposes, 'free circulation' has the same meaning as in the Treaty Establishing the European Community (EC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179), art 23(2): Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 3(3). Any prepacked food, either contained in an indelibly marked glass bottle intended for re-use and having no label, ring or collar, or the largest surface of whose packaging has an area of less than ten square centimetres, need not be marked or labelled with the GMO particulars: reg 3(4).

2 As to food labelling requirements generally see PARAS 373 post.

3 Ie other than food to which the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5 applies: see notes 9-20 *infra*.

4 Ie by EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), or EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15).

5 Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 4.

6 Food is to be regarded as prepacked for the purposes of the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768 if: (1) it is ready for sale to the final consumer or to a mass caterer; and (2) it is (a) put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging; or (b) wholly enclosed in packaging before being offered for sale and the food is intended to be cooked without opening the packaging: reg 2(3). However, food is not regarded as prepacked for the purposes of the regulations if it comprises an individually wrapped sweet or chocolate which is not enclosed in any further packaging and which is not intended for sale as an individual item: reg 2(3).

7 'Pre-packed for direct sale' means: (1) in relation to a food other than a flour confectionery, bread and edible ices, prepacked by a retailer for sale by him on the premises where the food is packed or from a vehicle or stall used by him; and (2) in relation to flour confectionery, bread and edible ices, prepacked by a retailer for sale as in head (1) *supra*, or prepacked by the producer of the food for sale by him either on the premises where the food is produced or on other premises from which he conducts business under the same name as the business conducted on the premises where the food is produced: *ibid* reg 2(1). 'Flour confectionery' means any cooked food which is ready for consumption without preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges, crumpets, muffins, macaroons, ratafias, pastry and pastry cases, but does not include bread, pizzas, biscuits, crispbread, extruded flat bread or any food containing a filling which has as an ingredient any cheese, meat, offal, fish, shellfish, vegetable protein material or microbial protein material: reg 2(1). 'Biscuits' includes wafers, rusks, oatcakes and matzos: reg 2(1). 'Edible ice' includes ice-cream, water ice and fruit ice, whether alone or in any combination, and any similar food: reg 2(1). 'Premises' includes any ship or aircraft: reg 2(1).

8 'Fancy confectionery product' means any confectionery product in the form of a figure, animal, cigarette, or egg or in any other fancy form: *ibid* reg 2(1).

9 Ibid reg 5(1).

10 Ie by EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended), or EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15).

11 Ie in Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(3): see note 15 infra. In relation to Wales see the Food Labelling Regulations 1996, SI 1996/1499, reg 36(4A)-(4C) (added by SI 1999/747).

12 Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(2).

13 Where any food to which the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5 applies is sold otherwise than to the final consumer, the particulars with which it is required to be marked or labelled by EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), or EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15) must appear: (1) on a label attached to the food; (2) on a ticket or notice which is readily discernible by the intending purchaser at the place where he chooses the food; or (3) in commercial documents relating to the food where it can be guaranteed that such documents either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(6).

14 'Appropriate premises' means premises where: (1) the staff provide clarification at the request of an intending purchaser as to whether: (a) particular food sold at those premises, other than food falling within EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4), art 1(2) or art 2(2), is produced in whole or in part from a genetically modified product referred to in art 1; and (b) particular food sold at those premises contains additives or flavourings produced in whole or in part from a genetically modified organism; and (2) there is an established procedure at those premises for keeping staff informed of that information: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(5).

15 Ibid reg 5(3).

16 Ibid reg 5(4).

17 Ie foodstuffs to which the labelling requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) apply.

18 Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(4)(a).

19 Ie foodstuffs to which the labelling requirements of EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15) apply.

20 Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(4)(b). In relation to Wales see the Food Labelling Regulations 1996, SI 1996/1499, reg 36(4A)-(4C) (as added: see note 11 supra).

21 Ie by EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) or by EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15).

22 Ie the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768.

23 Ibid reg 6(1).

24 Ibid reg 6(2).

25 Ibid reg 6(3).

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified

Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

356 Additional rules for the labelling of genetically modified additives and flavourings and genetically modified maize and soya

TEXT AND NOTES--SI 2000/768 revoked: SI 2004/2335.

NOTE 1--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/357. Offences with regard to novel foods and food ingredients and foods required to be labelled with particulars as to genetic modification.

357. Offences with regard to novel foods and food ingredients and foods required to be labelled with particulars as to genetic modification.

Any person who contravenes or fails to comply with any of the specified provisions in the European Regulation concerning novel foods and novel food ingredients¹ is guilty of an offence².

If any person: (1) sells any food to which certain labelling requirements³ apply which is not marked or labelled with Genetically Modified Organism particulars⁴; (2) sells any food which is not marked or labelled in accordance with the appropriate provisions⁵; (3) places on the market any novel food or novel food ingredient in respect of which the additional requirements relating to consumer information⁶ have not been met, he is guilty of an offence⁷.

In any proceedings for an offence under the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000⁸ it is a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to those regulations and that it complies with that legislation⁹.

The enforcement of the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000 is the responsibility of the food authority or the port health authority¹⁰.

1 The specified provisions which it is an offence to contravene are EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1), arts 3.1, 3.2, 4.1, 5, 6.1, 6.4, 8.1, 9.1 (see PARA 349 et seq ante): Novel Foods and Novel Food Ingredients Regulations 1997, SI 1997/1335, reg 2, Schedule.

2 Ibid reg 5(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5(1). As to the standard scale see PARA 242 note 18 ante.

The Food Safety Act 1990 s 2 (as amended) (extended meaning of 'sale') (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offences due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 35(1)-(3) (punishment of offences) (see PARA 468 post) (in so far as it relates to offences under s 33(1), (2)), s 36 (offences by bodies corporate) (see PARA 460 post), and s 44 (protection of officers acting in good faith) (see PARA 272 ante), apply for the purposes of the Novel Foods and Novel Food Ingredients Regulations 1997, SI 1997/1335 (as amended) as they apply for the purposes of the Food Safety Act 1990 s 8 (see PARA 283 ante), s 14 (see PARA 360 post), or s 15 (see PARA 372 post) and unless the context otherwise requires any reference in them to the Food Safety Act 1990 is to be construed as a reference to the Novel Foods and Novel Food Ingredients Regulations 1997, SI 1997/1335 (as amended): reg 6(1) (renumbered, in relation to England, by SI 1999/3182).

3 I.e. the labelling requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended) concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in EC Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, and EC Commission Regulation 50/2000 (OJ L6, 11.1.2000, p 15) on the labelling of foodstuffs and food ingredients containing additives and flavourings that have been genetically modified or have been produced from genetically modified ingredients.

4 I.e. except in the case of any food to which the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 5(3) (see PARA 356 ante) applies and in respect of which alternative particulars are displayed in accordance with reg 5(4) (see PARA 356 ante).

5 I.e. in accordance with regs 4, 5 or 6 (see PARA 356 ante).

6 le set out in EC Council Regulation 258/97 (OJ L43, 14.2.97, p 1) of the European Parliament and the Council concerning novel foods and novel food ingredients, art 8(1).

7 Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 7. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7.

8 le the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768.

9 Ibid reg 9(a). It is also a defence in the case of export to a member state of food to which EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended), or EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15) applies, that the legislation complies with the provisions of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended), or EC Council Regulation 50/2000 (OJ L6, 11.1.2000, p 15), as appropriate, as read with EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 9(b).

10 See reg 8(1), (2). 'Food authority' does not include: (1) the council of a district in a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple) (see PARA 251 ante): Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 8(3). As to food authorities see PARA 251 et seq ante.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

357-358 Offences with regard to novel foods and food ingredients and foods required to be labelled with particulars as to genetic modification, Release of genetically modified organisms into the environment

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

357 Offences with regard to novel foods and food ingredients and foods required to be labelled with particulars as to genetic modification

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--EC Council Regulation 258/97 now as last amended by European Parliament and EC Council Regulation 1332/2008: SI 1997/1335 reg 2(1) (amended, in relation to England, by SI 2004/2335, SI 2009/3235, and, in relation to Wales, by SI 2004/3220, SI 2009/3377).

TEXT AND NOTES 3-10--SI 2000/768 revoked: SI 2004/2335.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/3. FOOD SAFETY AND HYGIENE/(6) NOVEL FOODS AND GENETICALLY MODIFIED SOURCES/358. Release of genetically modified organisms into the environment.

358. Release of genetically modified organisms into the environment.

The deliberate release¹ of genetically modified² organisms into the environment is governed by the European Directive on the deliberate release into the environment of genetically modified organisms³, which is implemented in the United Kingdom⁴ by the Environmental Protection Act 1990⁵.

1 'Deliberate release' means any intentional introduction into the environment of a genetically modified organism or a combination of genetically modified organisms without provisions for containment such as physical barriers together with a chemical and/or biological barriers used to limit their contact with the general population and the environment: EC Council Directive 90/220 art 2(3). The primary concerns relate to risks to the environment: see generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

2 As to genetic modification see PARA 349 et seq ante.

3 ie EC Council Directive 90/220 (OJ L117, 8.5.90, p 15) (as amended) (see PARA 351 ante).

4 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

5 See ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 46; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 796.

UPDATE

349-358 Novel Foods and Genetically Modified Sources

See the Genetically Modified Food (England) Regulations 2004, SI 2004/2335, and the Genetically Modified Food (Wales) Regulations 2004, SI 2004/3220, which apply and provide for the enforcement and execution of certain provisions of EC Parliament and Council Regulation 1829/2003 on genetically modified food and feed. See also the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412 (amended by SI 2008/2598), and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, which provide for the enforcement and execution of EC Parliament and Council Regulation 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. See also the Rice Products from the United States of America (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/622, and the Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/781 (amended by SI 2008/1646), which provide for the implementation of EC Commission Decision 2006/601 (amended by EC Commission Decision 2006/754) on emergency measures regarding a non-authorised genetically modified rice. See also the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, SI 2008/1079, and the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008, SI 2008/1080, which provide for the implementation of EC Commission Decision 2008/289 on emergency measures regarding the unauthorised genetically modified organism 'Bt 63' in rice products.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(1) IN GENERAL/359. Control of the composition of food.

4. COMPOSITION OF FOOD

(1) IN GENERAL

359. Control of the composition of food.

The composition of food is controlled in four ways: (1) there are provisions under which it is an offence to add any substance to food which renders it injurious to health¹; (2) there are provisions under which it is an offence to sell food which is not of the nature, substance or quality demanded by the purchaser²; (3) there are regulations governing the use of colours, sweeteners and other additives such as preservatives and antioxidants³; and (4) there are specific regulations governing the composition of particular foods⁴.

1 See PARA 282 ante.

2 See PARA 360 post.

3 See PARAS 366-369 post.

4 See PARAS 424-455 post. This fourth category is often referred to as 'recipe law' and it was, in the past, a significant feature of traditional British food legislation and also of European Union legislation. The difficulties experienced in seeking to harmonise recipe law for the different member states of the European Union has led to a new approach which seeks to circumvent the difficulties of harmonisation. Instead, the emphasis is on legislating to ensure that the consumer knows what he or she is buying and on providing that, to the extent that recipe law remains in existence in any member state, it cannot be used as a ground for preventing the marketing in that member state of goods which are made in another member state and could lawfully be marketed there (ie, goods which comply with the relevant general European law). The consequence of this change in approach is that there are some foods in respect of which there are detailed recipe provisions which are common to the whole of the European Union, and there are others in relation to which there is little or no recipe prescription.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/360. Sale of food not of the proper nature, substance or quality.

(2) NATURE, SUBSTANCE AND QUALITY

360. Sale of food not of the proper nature, substance or quality.

Subject to certain defences¹, any person who sells² to the purchaser's³ prejudice any food⁴ which is not of the nature or substance or quality⁵ demanded by the purchaser, is guilty of an offence⁶. This offence can in practice cover cases where the food is not composed as expected by the purchaser and cases where the food is misdescribed⁷.

Proof of mens rea is not necessary to establish the offence⁸; it is sufficient to prove that the purchaser has not received the article he asked for or which he had a right to expect he would receive⁹. The presence of a small piece of extraneous matter in the article of food demanded may render the selling of it to be in contravention of the provision¹⁰. It is no defence to allege that the purchaser was not prejudiced because he bought for analysis or examination¹¹.

1 See PARA 465 post.

2 For the purposes of the Food Safety Act 1990 s 14(1), the reference to 'sale' is to be construed as a reference to sale for human consumption: s 14(2). For an extended meaning of 'sale' see s 2 (as amended); and PARA 262 note 5 ante. See also *Fleming v Edwards* [1986] BTLC 169, DC (supply of food under contract containing rejection clause was deemed to be a 'sale'). This case was decided under similarly worded previous legislation.

3 A purchaser cannot be prejudiced when clear notice is given to and received by him at the time of the sale that the article sold is not of the nature, or substance, or quality he demands; in order to show that an article sold was to the prejudice of the purchaser it is not necessary to prove that he has sustained actual prejudice or damage: see PARAS 362-363 post.

4 For the meaning of 'food' see PARA 201 ante.

5 There are three distinct offences. Thus an information which alleged that a sale was 'not of the nature, or not of the substance, or not of the quality demanded' was bad for uncertainty: see *Bastin v Davies* [1950] 2 KB 579, [1950] 1 All ER 1095, DC; *Moore v Ray* [1951] 1 KB 98, [1950] 2 All ER 561, DC. Natural food, eg fruit or fish, not of the variety or kind asked for are not of the 'nature' demanded; 'substance' covers aspects of composition; and 'quality' means commercial quality and not 'description' or 'kind': *Anness v Grivell* [1915] 3 KB 685. See also *McDonald's Hamburgers Ltd v Windle* (1986) 151 JP 333, DC.

There is an overlap between the three words 'nature', 'substance' and 'quality', and a summons will not be bad simply because one of the other words could have been used: *Preston v Greenclose Ltd* (1975) 139 JP Jo 245, DC (food sold as scampi consisted of scampi and white fish; could arguably be a case of either 'substance' or 'nature'); *Shearer v Rowe* (1985) 149 JP 698, DC ('minced beef' contained 10% pork and 10% lamb; could be a case of either 'substance' or 'nature').

6 Food Safety Act 1990 s 14(1). Any person guilty of such an offence is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months or to both: s 35(2), (3). As to penalties see PARA 468 post. A case may be brought under this provision even though the facts would justify proceeding under what is now s 7 (see PARA 282 ante): *Goulder v Rook, Bent v Ormerod* [1901] 2 KB 290. As to the right of civil action for damages for breach of this provision see *Square v Model Farm Dairies (Bournemouth) Ltd* [1938] 2 All ER 740; on appeal [1939] 2 KB 365, [1939] 1 All ER 259, CA (a mere breach of this provision, involving no negligence, did not constitute a ground for civil remedy). See, however, *Sopers of Harrow Ltd v Johnston & Son (London) Ltd* [1944] 2 All ER 42; affd [1944] 2 All ER 586, CA (sale of 'cordial' in breach of warranty). Proof of a previous conviction for contravention of this provision establishes a defendant's liability in a civil action unless he can prove to the contrary: see the Civil Evidence Act 1968 s 11(1), (2); CIVIL PROCEDURE vol 11 (2009) PARA 767; CIVIL PROCEDURE vol 12 (2009) PARA 1208. As to the court's powers to make a compensation order see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 375 et seq.

7 See PARA 365 post.

8 *Betts v Armstead* (1888) 20 QBD 771; *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1. As to strict liability see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 15.

9 See *Goulder v Rook, Bent v Ormerod* [1901] 2 KB 290 at 296 per Lord Alverstone CJ. Where a substance sold as 'lardine' was certified to contain added water it was held that the magistrates must determine whether water in lardine constituted an adulterant: *Rudd v Skelton Co-operative Society Ltd* (1911) 104 LT 919. A purchaser of 'rum and butter toffee' is entitled to expect that all the fat in the confection will be butter fat: *Riley Bros (Halifax) Ltd v Hallimond* (1927) 44 TLR 238. See also *Anderson v Britcher* (1913) 110 LT 335. A 'cordial', commercially, implies a substantial percentage of sugar: *Sopers of Harrow Ltd v Johnston & Son (London) Ltd* [1944] 2 All ER 586, CA.

10 See *J Miller Ltd v Battersea Borough Council* [1956] 1 QB 43, [1955] 3 All ER 279, DC (piece of metal in chocolate cream bun); *Turner & Son Ltd v Owen* [1956] 1 QB 48, [1955] 3 All ER 565n, DC (piece of string in loaf of bread); *Chibnall's Bakeries v Cope-Brown* [1956] Crim LR 263 (used bandage adhering to bottom crust of loaf of bread); *Newton v West Vale Creamery Co Ltd* (1956) 120 JP 318, DC (fly in bottle of milk); *Southworth v Whitewell Dairies Ltd* (1958) 122 JP 322, DC (sliver of glass in bottle of milk). However, the presence of a foreign body in food, such body being sterile and harmless and not having affected the substance of the food, does not necessarily constitute an offence: *Edwards v Llaethdy Meirion* [1957] Crim LR 402, DC. Cf *Barber v Co-operative Wholesale Society Ltd* (1983) 147 JP 296, DC, where it was held that the presence of a straw in a bottle of milk, while neither dangerous nor harmful, rendered the milk not of the quality demanded.

11 Food Safety Act 1990 s 14(2).

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/361. Seller's responsibility.

361. Seller's responsibility.

A person may be prosecuted under the foregoing provision¹ even where the facts would support a conviction under other provisions². A person who has authorised his employee to sell may be responsible for his employee's acts, even though he has expressly forbidden him to adulterate and has taken precautions to prevent him doing so³; and while the offending employee may also be convicted as the actual seller, proceedings against the employee do not relieve the employer from responsibility⁴ unless it is shown that the employer took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁵. The seller is also responsible, subject to the defence of due diligence⁶, for the unauthorised act of a stranger if the act results in the purchaser obtaining an article not of the nature, substance or quality demanded⁷.

An offence may be committed if the article sold is wholly different from the article demanded by the purchaser, provided he is prejudiced, as where lard is sold for butter, chicory for coffee or haddock for hake⁸.

1 le under the Food Safety Act 1990 s 14(1): see PARA 360 ante. The cases cited in this paragraph were decided under similarly worded previous legislation.

2 *Goulder v Rook, Bent v Ormerod* [1901] 2 KB 290; *Beardsley v Walton & Co* [1900] 2 QB 1; *Dickins v Randerson* [1901] 1 KB 437.

3 *Brown v Foot* (1892) 56 JP 581; *Farley v Higginbotham* (1898) 42 Sol Jo 309, DC; *Houghton v Mundy* (1910) 103 LT 60; *Andrews v Luckin* (1917) 117 LT 726; cf *Kearley v Tyler* (1891) 56 JP 72, DC (a decision which must now be regarded as incorrect). If, however, an employee acts altogether outside the scope of his authority, eg in selling an article of food which is not for sale, the employer may not be liable: *Whittaker v Forshaw* [1919] 2 KB 419; *Lindsay v Dempster* 1912 SC (J) 110; *Wilson v Fleming* (1913) 51 Sc LR 72. A limited authority to sell the article may be sufficient to make the employer liable: *Elder v Bishop Auckland Co-operative Society Ltd* (1917) 86 LJB 1412, DC. As to the principles of vicarious liability generally see TORT vol 97 (2010) PARA 680 et seq.

4 *Hotchin v Hindmarsh* [1891] 2 QB 181, DC.

5 See the Food Safety Act 1990 s 21; and 465 post.

6 See *ibid* s 21; and PARA 465 post.

7 *Parker v Alder* [1899] 1 QB 20 (water added to milk during transit by railway without the knowledge or authority of, and without any default or negligence on the part of, the seller or any employee of his); *Andrews v Luckin* (1917) 117 LT 726.

8 *Knight v Bowers* (1885) 14 QBD 845; *Sandys v Rhodes* (1903) 67 JP 352. See also *Meah v Roberts* [1978] 1 All ER 97, [1977] 1 WLR 1187, DC (caustic soda solution for lemonade). Magistrates are entitled to hold that the description 'butter toffee' implies that no fat except butter is contained in the toffee: *Riley Bros (Halifax) Ltd v Hallimond* (1927) 44 TLR 238.

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

361 Seller's responsibility

NOTE 4--The 1990 Act s 14 applies to all foods, including alcoholic drink: *Nottingham CC v Wolverhampton and Dudley Breweries plc* [2003] EWHC 2847 (Admin), [2004] QB 1274.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/362. Sale to prejudice of purchaser.

362. Sale to prejudice of purchaser.

It is no offence to give a purchaser an article superior to that for which he asks, provided he is not prejudiced¹. The prejudice, however, is not confined to pecuniary prejudice, or to prejudice arising from the consumption of unwholesome food, or to prejudice or damage to the actual purchaser in the particular case². A purchaser is not prejudiced if the seller clearly brings to his knowledge the fact that the article is not of the nature, substance or quality demanded³, but it is not necessary for the seller to disclose precisely what is the composition of the article sold⁴. There is prejudice, however, whenever there is a sale of an article in such a state that an ordinary unskilled person would have been prejudiced if he had received it in response to his demand for an article of that description, even though for some reason, peculiar to himself, the actual purchaser is not prejudiced⁵. The price charged for an article is irrelevant to the matter of prejudice⁶, however price is relevant in assessing what standard of goods were being demanded in a case where the description given to the goods admits of more than one standard⁷.

1 *Hoyle v Hitchman* (1879) 4 QBD 233 at 240 per Lush J; *Hughes v Traynor* (1916) 50 ILTR 76. The cases cited in this paragraph were decided under wording similar to the current legislation contained in the Food Safety Act 1990 s 14: see PARA 360 ante.

2 For instance, an expert in foodstuffs, on going into a shop may know at once that an article he sees there, and asks for, is not the article usually sold by that name, and, if he insists upon having it, he cannot be said to be prejudiced in the ordinary sense of the word; nevertheless an offence may have been committed: cf *Heywood v Whitehead* (1897) 76 LT 781.

3 *Sandys v Small* (1878) 3 QBD 449; *Preston v Grant* [1925] 1 KB 177; *Rodbourn v Hudson* [1925] 1 KB 225, DC; *Thompson v Ball* (1948) 92 Sol Jo 272. See also *Sandys v Markham* (1877) 41 JP Jo 52; *Horder v Grainger* (1880) 44 JP Jo 188; *Goldsmith v Maddaford* (1882) 46 JP Jo 44; *Higgins v Hall* (1886) 51 JP 293; *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1; *Pearks, Gunston and Tee Ltd v Houghton* [1902] 1 KB 889; *Hayes v Rule* (1902) 87 LT 133; *Dearden v Whiteley* (1916) 85 LJB 1420, DC; *Collett v Walker* (1895) 59 JP 600. As to the nature of the notice to the purchaser see PARA 363 post.

4 *Williams v Friend* [1912] 2 KB 471.

5 See *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1; *Hoyle v Hitchman* (1879) 4 QBD 233; *Breed v British Drug Houses Ltd* [1947] 2 All ER 613.

6 See *AJ Mills & Co v Williams* (1964) 62 LGR 354, DC.

7 See *Goldup v John Manson Ltd* [1982] 2 QB 161, [1981] 3 All ER 257, DC (a notice that the minced beef sold contained up to 30% fat was not an offence where the retailer offered two qualities of minced beef, the cheaper of which contained 33% fat).

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/363. Notice to purchaser.

363. Notice to purchaser.

A notice to the purchaser that the article sold is not of the nature, substance or quality demanded must be clear and unequivocal¹. Notice may be given by verbal communication², by a printed notice displayed in the shop, by a label on the package containing the article³ or in any other manner which satisfies the court that the purchaser did know, as the result of information given by the seller, that the article was different⁴. The exhibition of a notice which the purchaser does not see and to which his attention is not called does not rebut the presumption that the sale is to the prejudice of the purchaser⁵. It is irrelevant that an average purchaser would have seen the notice⁶. However, once it is proved that the purchaser did see the notice, the question of whether it was an adequate notice depends on whether an average purchaser would have understood from the notice that the food was not of the nature, substance or quality demanded⁷. A mere notice that articles sold in a shop are not of any guaranteed strength is not sufficient to bring the fact of dilution to the mind of the purchaser⁸, and if the notice is intended to cover fraud on the part of the seller it will not protect him against conviction⁹.

1 See *Collett v Walker* (1895) 59 JP 600, where a notice which simply described the article as 'finest oleine cheese' and contained no explanation of the nature of oleine, was held insufficient, since it failed to make it clear that the food was not cheese as ordinarily understood. In *Souter v Lean* (1903) 4 Adam 280 it was held by a Scottish court that a notice on a milk can 'not guaranteed 3%' was not sufficient to protect the seller. In *Robertson v M'Kay* (1923) 61 Sc LR 129, a label 'butter mixture' was held to be an insufficient disclosure that what was sold was not butter. In *Harper v Wade* (1979, unreported) DC, a carton of cream was offered for sale at a reduced price with a notice stating that it was out of date. The 'sell by' date on the carton was misread by the purchaser, who then discovered it to be inedible. It was held that the notice and sell by date were irrelevant since the purchaser thought she was buying good and usable cream. See also *Wilson and M'Phee v Wilson* (1903) 68 JP 175. The cases cited in this paragraph were decided under wording similar to the current legislation contained in the Food Safety Act 1990 s 14: see PARA 360 ante.

2 *Higgins v Hall* (1886) 51 JP 293; *Otter v Edgley* (1893) 57 JP 457, DC.

3 As to notice by label, see further PARA 372 et seq post.

4 See *Morris v Johnson* (1890) 54 JP 612; *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1. It is perhaps an open question whether the notice must, in fact, be definitely brought to the purchaser's knowledge if from the nature of the case or the circumstances a knowledge on his part of the nature, substance and quality of the article sold can reasonably be assumed: see *Pearks, Gunston and Tee Ltd v Houghton* [1902] 1 KB 889; *Hayes v Rule* (1902) 87 LT 133. For a case where, on the particular facts, it was held that the sale of a different article was not to the prejudice of the purchaser see *Bundy v Lewis* (1908) 99 LT 833, where, however, no reasons are given for the decision.

5 *Preston v Grant* [1925] 1 KB 177; *M'Loughlin v Fulton* (1921) 55 ILT 202. Cf *Gage v Elsey* (1883) 10 QBD 518; *Palmer v Tyler* (1897) 61 JP 389.

6 *Preston v Grant* [1925] 1 KB 177.

7 *Rodbourn v Hudson* [1925] 1 KB 225, DC.

8 In *Rodbourn v Hudson* [1925] 1 KB 225, DC, the court held that there was evidence to justify a conviction when watered rum was sold on premises in which there was exhibited the notice 'All spirits sold at this establishment are of the same superior quality as heretofore, but to meet the requirements of the Food and Drugs Acts they are now sold as diluted spirits; no alcoholic strength guaranteed'; it was held that the purchaser must be told in substance that the thing which he is getting is not the thing he asked for; in this case the notice in question was misleading and of grave and calculated ambiguity. See also *Dawes v Wilkinson* [1907] 1 KB 278; *Gage v Elsey* (1883) 10 QBD 518; *Morris v Johnson* (1890) 54 JP 612; *Brander v Kinnear*, *Kelso v Soutar*, *Williamson v Soutar* 1923 JC 42; *Patterson v Findlay* 1925 JC 53.

9 *Liddiard v Reece* (1878) 44 JP 233; *Horder v Meddings* (1880) 44 JP 234; *Otter v Edgley* (1893) 57 JP 457; *Star Tea Co Ltd v Neale* (1909) 73 JP 511. See also PARA 372 et seq post.

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/364. False representation.

364. False representation.

Even where, prior to the sale, a seller has made a false representation as to the nature or substance or quality of the article demanded, he does not commit an offence if he discloses to the purchaser, at the time of the sale, the true nature, substance and quality of the article¹; but where a false representation is made at the time of sale, an offence may be committed, even if the purchaser must have known that the representation was untrue, and therefore was not deceived by it².

It is not necessary that there should be any express representation at the time of sale that the article is not adulterated: if an article is asked for and something is handed over as that article, there is an implied representation that the article so sold is of the nature, substance and quality demanded³.

1 *Kirk v Coates* (1885) 16 QBD 49. The cases cited in this paragraph were decided under wording similar to the current legislation contained in the Food Safety Act 1990 s 14: see PARA 360 ante.

2 *Heywood v Whitehead* (1897) 76 LT 781.

3 *Fitzpatrick v Kelly* (1873) LR 8 QB 337. See also *Roberts v Egerton* (1874) LR 9 QB 494.

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(2) NATURE, SUBSTANCE AND QUALITY/365. Question of fact.

365. Question of fact.

Whether an article sold is of the nature, substance or quality of the article demanded is a question of fact to be decided in each case¹, unless there is a statutory or recognised standard established in respect of the article². The evidence should be directed to what the purchaser meant when he demanded a particular food³; an expert's disputed opinion that the description of an article purchased by that description is such that it is desirable that it should contain certain ingredients is not sufficient to prove that the purchaser demanded an article containing those ingredients⁴. However, in the absence of any evidence to contradict the certificate of analysis of an analyst who has not been called⁵, the court should accept his statements of fact in it and also the statements of opinion⁶.

If a statutory standard of quality has been fixed for an article, the article must not be inferior to that standard; and if the article demanded has some recognised standard of composition or quality, the article sold must come up to that standard⁷. Statutory standards have been fixed for a large number of foods⁸. Where the article has no statutory or recognised standard the court must fix its own standard upon the evidence before it⁹, bearing in mind that in such cases no offence is committed by selling a genuine article that is of a low quality¹⁰.

1 *Pashler v Stevenitt* (1876) 35 LT 862; *Webb v Knight* (1877) 2 QBD 530; *Goulder v Rook, Bent v Ormerod* [1901] 2 KB 290; *Wolfenden v McCulloch* (1905) 92 LT 857.

2 See *Webb v Jackson Wyness Ltd* [1948] 2 All ER 1054.

3 *Goldup v John Manson Ltd* [1982] QB 161, [1981] 3 All ER 257, DC; *TW Lawrence & Sons Ltd v Burleigh* (1981) 146 JP 134, DC.

4 *Collins Arden Products Ltd v Barking Corp*n [1943] KB 419, [1943] 2 All ER 249.

5 The certificate of analysis is sufficient evidence of the facts stated in it only where the analysis is not called and no contrary evidence is offered: see PARA 462 post.

6 See *Bowker v Woodroffe* [1928] 1 KB 217, DC; *Broughton v Whittaker* [1944] KB 269, [1944] 2 All ER 544, DC; but see also the cases cited in PARA 462 note 8 post.

7 *White v Bywater* (1887) 19 QBD 582; *Dickins v Randerson* [1901] 1 KB 437. A standard fixed by an order under the Defence (General) Regulations 1939, SR & O 1939/927 (revoked), for the purpose of controlling the price of a commodity, was held not to be applicable in *Highnam v Turier* [1951] 2 All ER 850, DC. See also *Thomas Robinson, Sons & Co Ltd v Allardice* (1944) 170 LT 297, DC (standard set by a wartime food control order was held not applicable as it might have been set for economic or other reasons and not with regard to food and drug legislation); *Marston v Loney* [1955] Crim LR 778, DC.

8 See PARAS 424-445 post.

9 *Wilson and M'Phee v Wilson* (1903) 6 F 10, Ct of Sess ('old brandy' containing 65% of spirit not derived from grapes was held not to be 'brandy'); *Pashler v Stevenitt* (1876) 35 LT 862 ('gin' 44 degrees under proof was held not to be gin); *Roberts v Leeming* (1905) 69 JP 417; *Bowker v Woodroffe* [1928] 1 KB 217; *Preston v Jackson* (1928) 73 Sol Jo 712 (vinegar); *Riley Bros (Halifax) Ltd v Hallimond* (1927) 44 TLR 238; *Webb v Jackson Wyness Ltd* [1948] 2 All ER 1054 (vinegar); *Kat v Diment* [1951] 1 KB 34, [1950] 2 All ER 657 ('non-brewed vinegar'). See also *Marston v Loney* [1955] Crim LR 778, DC; *Thrussell v Whiteman* [1956] Crim LR 195, DC (justices acted correctly in rejecting the certificate of an analyst who had not been called, where the certificate was based on a revoked standard of meat content for pork sausages, and in accepting the defendant's evidence of what he considered to be the right content). Where a compounded article of food is in question, the justices are entitled to convict if there is evidence that, notwithstanding that the proper composition of the food is imprecise or arguable, the food is deficient in composition: *Tonkin v Victor Value Ltd* [1962] 1 All ER 821, [1962] 1 WLR 339, DC.

10 *Hoyle v Hitchman* (1879) 4 QBD 233 at 240 per Lush J; *Morton v Green* (1881) 8 R 36, Ct of Sess; and see the cases cited in PARA 360 note 5 ante. In *Smith v Wisden* (1901) 66 JP 150 it was held that it was not an offence to sell marmalade containing 13% of glucose, which was not injurious to health, and had not been added fraudulently, but only to prevent fermentation and crystallisation.

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(3) ADDITIVES/366. Colours in food.

(3) ADDITIVES

366. Colours in food.

The use of colours in foods is controlled by regulations implementing European Directives¹. Only permitted colours² may be used in or on food³. Permitted colours can be used if they are specifically sanctioned in relation to any particular food⁴.

In some cases the maximum level of colour is prescribed by quantity and in other cases it is prescribed by a limit of quantum satis⁵. Where the control is by quantity, the quantities are to be assessed when the food is ready to eat having been prepared according to any instructions for use⁶. Where it is quantum satis, the permitted colour may be used in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and provided that such use does not mislead the consumer⁷.

There are specific provisions relating to compound foods⁸. First, if a permitted colour is used legitimately in an ingredient then no offence is committed if the ingredient is used to manufacture a compound food in which the permitted colour is not permitted⁹. However, this provision does not apply to certain compound foods which are specifically listed¹⁰. Secondly, where a colour is permitted in a compound food, it may be incorporated into an ingredient of that compound food even if the colour would not be permitted in that ingredient if the ingredient itself were supplied as a food¹¹.

No person may sell any food having in it or on it any added colour other than a permitted colour that has been used legitimately¹². Colours may be sold for use in or on food only if they are permitted colours¹³ and in relation to sales direct to the consumer only a much shorter list of permitted colours may be sold¹⁴.

Any person who contravenes or fails to comply with the requirements as to colour¹⁵ is guilty of an offence¹⁶. It is defence for the person charged to prove that the food or colour concerned was intended for export to a country which has analogous legislation and the food or colour complies with that legislation¹⁷.

Where any food is certified by a food analyst¹⁸ as being food which is an offence to sell under the provisions relating to colours in food, that food may be seized and destroyed on the order of a justice of the peace as food failing to comply with food safety requirements contrary to the Food Safety Act 1990¹⁹.

Each food authority²⁰ has a duty to enforce and execute these provisions in its area²¹.

1 See the Colours in Food Regulations 1995, SI 1995/3124 (as amended), which implement European Parliament and Council Directive 94/36 (OJ L237, 10.9.94, p 13) on colours for use in foodstuffs and EC Commission Directive 95/45 (OJ L226, 22.9.95, p 1) laying down specific criteria of purity concerning colours for use in foodstuffs (amended by EC Directive 1999/75 (OJ L206, 5.8.99, p 19).

2 'Colour' means a food additive which is used or intended to be used for the primary purpose of adding or restoring colouring in a food and includes: (1) any natural constituent of food and any natural source not normally consumed as food as such and not normally used as a characteristic ingredient of food; and (2) any preparation obtained from food or from any other natural source material by physical extraction, chemical extraction or physical and chemical extraction which results in the selective extraction of the pigment relative to the nutrient or aromatic constituent; it does not include any food or any flavouring used in the manufacture of food because of its aromatic, sapid or nutritive properties even if it is used secondarily to add or restore colouring to the food, nor does it include any colour when it is used only for colouring any inedible external part of a food: Colours in Food Regulations 1995, SI 1995/3124, reg 2(1). 'Food additive' means any substance not

normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food results, or may reasonably be expected to result, in it or its by-products becoming directly or indirectly a component of such foods: reg 2(1).

For a list of the permitted colours see reg 2(1), Sch 1. In order to be a permitted colour, the colour must satisfy specific purity criteria set out in EC Commission Directive 95/45 (OJ L226, 22.9.95, p 1) Annex for that colour: Colours in Food Regulations 1995, SI 1995/3124, reg 2(1), Sch 1.

3 Ibid reg 3(1).

4 See ibid regs 3(2), (3), (4), 4, 5, Schs 2-5.

5 See ibid reg 2(4).

6 Ibid reg 2(4)(a).

7 Ibid reg 2(4)(b).

8 See ibid reg 6.

9 Ibid reg 6(1).

10 Ibid reg 6(3), Sch 2.

11 Ibid reg 6(2).

12 Ibid reg 7(4).

13 Ibid reg 7(1).

14 Ibid reg 7(2), (3).

15 Ie the Colours in Food Regulations 1995, SI 1995/3124 (as amended).

16 Ibid reg 9(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 9(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (see PARA 262 ante) (extended meaning of sale), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Colours in Food Regulations 1995, SI 1995/3124, reg 11.

17 Ibid reg 10(a). In the case of export to another member state the legislation must comply with EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) on the approximation of the laws of the member states concerning food additives authorised for use in foodstuffs intended for human consumption (amended by European Parliament and Council Directive 94/34 (OJ L237, 10.9.94, p 1)); European Parliament and Council Directive 94/36 (OJ L237, 10.9.94, p 13) on colours for use in foodstuffs; and EC Commission Directive 95/45 (OJ L226, 22.9.95, p 1) (as amended) laying down specific criteria of purity concerning colours for use in foodstuffs: Colours in Food Regulations 1995, SI 1995/3124, reg 10(b).

18 For the meaning of 'food analyst' see PARA 267 note 13 ante. See further PARA 268 ante.

19 Colours in Food Regulations 1995, SI 1995/3124, reg 8. As to the power to seize and destroy food under the Food Safety Act 1990 s 9 see PARA 284 ante.

20 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple: Colours in Food Regulations 1995, SI 1995/3124, reg 9(4). As to food authorities see PARA 251 et seq ante.

21 Ibid reg 9(3).

UPDATE

360-366 Sale of food not of the proper nature, substance or quality ... Colours in food

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

366 Colours in food

TEXT AND NOTES--From 20 January 2010, EC Council Directive 94/36 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details of phased implementation see art 33. SI 1995/3124 replaced with amendments by the Food Additives (England) Regulations 2009, SI 2009/3238, and the Food Additives (Wales) Regulations 2009, SI 2009/3378, which enforce Regulation 1333/2008 in relation to England and Wales respectively.

NOTE 1--See also the Food (Suspension of the Use of E 128 Red 2G as Food Colour) (England) Regulations 2007, SI 2007/2266, and the Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Wales) (No 2) Regulations 2007, SI 2007/2315. Directive 95/45 replaced: EC Commission Directive 2008/128 (OJ L6, 10.1.2009, p 20).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(3) ADDITIVES/367. Sweeteners in food.

367. Sweeteners in food.

The use of sweeteners¹ in foods is controlled by regulations implementing European Directives². No person may sell any sweetener which is intended for sale to the ultimate consumer or for use in or on any food unless it is a permitted sweetener³. No person may use any sweetener in or on any food except for permitted sweeteners in the prescribed quantities⁴.

In some cases the maximum level of sweetener is prescribed by quantity and in other cases it is prescribed by a limit of quantum satis⁵. Where the control is by quantity, the quantities are to be assessed when the food is ready to eat having been prepared according to any instructions for use⁶. Where it is quantum satis, the permitted sweetener may be used in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and provided that such use does not mislead the consumer⁷.

No person may sell any food having in it or on it any added sweetener other than a permitted sweetener used in accordance with the provisions relating to sweeteners in food⁸. Permitted sweeteners must not be used in or on any food for infants or young children⁹.

There are provisions relating specifically to compound foods¹⁰. First, if a permitted sweetener is used legitimately in an ingredient then no offence is committed if the ingredient is used to manufacture a compound food in which the sweetener is not permitted¹¹. Secondly, where a sweetener is permitted in a compound food, it may be incorporated into an ingredient of that compound food even if the sweetener would not be permitted in that ingredient if the ingredient itself were supplied as a food¹².

A table-top sweetener¹³ may consist only of a permitted sweetener and must be labelled with the description specifying the name of the permitted sweetener which it contains¹⁴. Warnings must also be given¹⁵.

Any person who contravenes or fails to comply with these provisions¹⁶ is guilty of an offence¹⁷. It is a defence for the person charged to prove that the food or sweetener concerned was intended for export to a country which has analogous legislation and the food or sweetener complies with that legislation¹⁸.

Where any food is certified by a food analyst¹⁹ as being food which it is an offence under the provisions relating to sweeteners in food to sell, that food may be seized and destroyed on the order of a justice of the peace as food failing to comply with food safety requirements contrary to the Food Safety Act 1990²⁰.

Each food authority²¹ has a duty to enforce and execute these provisions in its area²².

1 'Sweetener' means any food additive which is used or intended to be used to impart a sweet taste to food or as a tabletop sweetener: Sweeteners in Food Regulations 1995, SI 1995/3123, reg 2(1). 'Food additive' means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food results, or may reasonably be expected to result, in it or its by-products becoming directly or indirectly a component of such foods: reg 2(1). 'Table top sweetener' is not defined in the regulations.

2 See the Sweeteners in Food Regulations 1995, SI 1995/3123 (as amended), which implement the European Parliament and Council Directive 94/35 (OJ L237, 10.9.94, p 3) on sweeteners for use in foodstuffs (amended by European Parliament and Council Directive 96/ 83 (OJ L48, 19.2.97, p 16); and EC Commission Directive 95/31 (OJ L178, 28.7.95, p 1) laying down specific criteria of purity concerning sweeteners for use in foodstuffs (amended by EC Commission Directive 98/66 (OJ L257, 19.9.98, p 35)).

- 3 Sweeteners in Food Regulations 1995, SI 1995/3123, reg 3(1). For a list of permitted sweeteners see reg 2(1), Sch 1. In order to be a permitted sweetener, the sweetener must satisfy specific purity criteria set out in EC Commission Directive 95/31 (OJ L178, 28.7.95, p 1) laying down specific criteria of purity concerning sweeteners for use in foodstuffs (as amended).
- 4 Sweeteners in Food Regulations 1995, SI 1995/3123, reg 3(2), (3) (reg 3(2) substituted by SI 1996/1477; Sweeteners in Food Regulations 1995, reg 3(2), (3) amended by SI 1997/814).
- 5 See the Sweeteners in Food Regulations 1995, SI 1995/3123, reg 2(3).
- 6 Ibid reg 2(3)(c).
- 7 Ibid reg 2(3)(d).
- 8 Ibid reg 5 (amended by SI 1997/814), which is expressed to be subject to the Sweeteners in Food Regulations 1995, SI 1995/3123, reg 5A (as added) (see the text to notes 11-12 *infra*).
- 9 Ibid reg 3(4) (amended by SI 1997/814).
- 10 See the Sweeteners in Food Regulations 1995, SI 1995/3123, reg 5A (added by SI 1997/814).
- 11 Sweeteners in Food Regulations 1995, SI 1995/3123, reg 5A(1) (as added: see note 10 *supra*).
- 12 Ibid reg 5A(2) (as added: see note 10 *supra*).
- 13 See note 1 *supra*.
- 14 Sweeteners in Food Regulations 1995, SI 1995/3123, reg 4. The description must be in the form 'x-based table-top sweetener', substituting for x the name of any permitted sweetener which it contains: see reg 4.
- 15 Where the table-top sweetener contains polyols the warning 'Excessive consumption may induce laxative effects' must be given and where it contains aspartame the warning 'contains a source of phenylalanine' must be given: *ibid* reg 4.
- 16 *Ie* the Sweeteners in Food Regulations 1995, SI 1995/3123 (as amended).
- 17 Ibid reg 7(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 note 18 *ante*. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 *ante*), s 3 (presumption that food is intended for human consumption) (see PARA 282 *ante*), s 20 (offence due to fault of another person) (see PARA 461 *post*), s 21 (defence of due diligence) (see PARA 465 *post*), s 22 (defence of publication in the course of business) (see PARA 467 *post*), s 30(8) (which relates to documentary evidence) (see PARA 269 *ante*), s 33 (obstruction etc of officers) (see PARA 271 *ante*), s 36 (offences by bodies corporate) (see PARA 460 *post*), s 44 (protection of officers acting in good faith) (see PARA 272 *ante*) apply: Sweeteners in Food Regulations 1995, SI 1995/3123, reg 9.
- 18 Ibid reg 8(a). In the case of export to another member state the legislation must comply with EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) on the approximation of the laws of the member states concerning food additives authorised for use in foodstuffs intended for human consumption (amended by European Parliament and Council Directive 94/34 (OJ L237, 10.9.94, p 1)); European Parliament and Council Directive 94/35 (OJ L237, 10.9.94, p 3) on sweeteners for use in foodstuffs (amended by European Parliament and Council Directive (OJ L48, 19.2.97, p 16)); and EC Commission Directive 95/31 (OJ L178, 28.7.95, p 1) laying down specific criteria of purity concerning sweeteners for use in foodstuffs (amended by EC Commission Directive 98/66 (OJ L257, 19.9.98, p 35)): Sweeteners in Food Regulations 1995, SI 1995/3123, reg 8(b).
- 19 For the meaning of 'food analyst' see PARA 267 note 13 *ante*. See further PARA 268 *ante*.
- 20 Sweeteners in Food Regulations 1995, SI 1995/3123, reg 6. As to the power to seize and destroy food under the Food Safety Act 1990 s 9 see PARA 284 *ante*.
- 21 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple: Sweeteners in Food Regulations 1995, SI 1995/3123, reg 7(4). As to food authorities see PARA 251 *et seq ante*.
- 22 Ibid reg 7(3).

UPDATE**367 Sweeteners in food**

TEXT AND NOTES--From 20 January 2010, EC Council Directive 94/35 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details of phased implementation see art 33. SI 1995/3123 replaced with amendments by the Food Additives (England) Regulations 2009, SI 2009/3238, and the Food Additives (Wales) Regulations 2009, SI 2009/3378, which enforce Regulation 1333/2008 in relation to England and Wales respectively.

NOTE 3--In order to be a permitted sweetener, the sweetener must now satisfy specific purity criteria set out in EC Commission Directive 2008/60 (OJ L158, 18.6.2008, p 17) Annex I: SI 1995/3123 reg 2(1) (amended by SI 2009/891 (England), SI 2009/1092 (Wales) (amended by SI 2009/2201)).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(3) ADDITIVES/368. Miscellaneous food additives.

368. Miscellaneous food additives.

Additives other than sweeteners, colours and flavourings in food, are referred to as miscellaneous additives¹. The use of these additives is controlled by regulations implementing European Directives². No person may use in or on any food any miscellaneous additive other than a permitted miscellaneous additive³. The permitted levels of particular miscellaneous additives in particular foods are specified in the regulations⁴.

In some cases the maximum level of a miscellaneous additive is prescribed by quantity and in other cases it is prescribed by a limit of quantum satis⁵. Where the control is by quantity, the quantities are to be assessed in the food as sold unless indicated otherwise in the provisions relating to miscellaneous additives⁶ and where the control is by quantum satis, the additive may be used in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and provided that such use does not mislead the consumer⁷.

There are provisions relating specifically to compound foods⁸. First, if a permitted miscellaneous additive is used legitimately in an ingredient then no offence is committed if the ingredient is used to manufacture a compound food in which the additive is not permitted⁹. However, this provision does not apply to certain compound foods¹⁰. Secondly, if an additive is permitted in a compound food, it may be incorporated into an ingredient of that compound food even if the additive would not be permitted in that ingredient if the ingredient itself were supplied in a food¹¹.

No person may sell any miscellaneous additive for use in or on food unless it is a permitted miscellaneous additive and no person may sell directly to the consumer any miscellaneous additive other than a permitted miscellaneous additive¹².

Any person who contravenes or fails to comply with the requirements as to miscellaneous additives¹³ is guilty of an offence¹⁴. It is a defence for the person charged to prove that the food or the food additive concerned was intended for export to a country which has analogous legislation and the food or food additive complies with that legislation¹⁵.

Where any food is certified by a food analyst¹⁶ as being food which it is an offence against these provisions to sell, that food may be seized and destroyed on the order of a justice of the peace as food failing to comply with food safety requirements contrary to the Food Safety Act 1990¹⁷.

Each food authority¹⁸ has a duty to enforce and execute these provisions in its area¹⁹.

1 'Miscellaneous additive' means any food additive which is used or intended to be used primarily as an acid, acidity regulator, anti-caking agent, anti-foaming agent, antioxidant, bulking agent, carrier, carrier solvent, emulsifier, emulsifying salt, firming agent, flavour enhancer, flour treatment agent, foaming agent, gelling agent, glazing agent, humectant, modified starch, packaging gas, preservative, propellant, raising agent, sequestrant, stabiliser or thickener, but does not include any processing aid or any enzyme except invertase or lysozyme: Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 2(1) (definition amended by SI 1999/1136). 'Food additive' means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food results, or may reasonably be expected to result, in it or its by-products becoming directly or indirectly a component of such foods: Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 2(1). Certain substances are specifically excluded: see reg 2(1). 'Processing aid' means any substance not consumed as a food by itself, intentionally used in the processing of raw materials, foods or their ingredients to fulfil a certain technological purpose during treatment or processing, and which may result in the unintentional but technically unavoidable presence of residues of a substance or its derivatives in the final

product, provided that these residues do not present any health risk and do not have any technological effect on the finished product: reg 2(1).

2 See the Miscellaneous Food Additives Regulations 1995, SI 1995/3187 (as amended), which implement European Parliament and Council Directive 95/2 (OJ L61, 18.3.95, p 1) on food additives other than colours and sweeteners (amended by European Parliament and Council Directive 96/85 (OJ L86, 28.3.97, p 4); and European Parliament and Council Directive 98/72 (OJ L295, 4.11.98, p 18); EC Council Directive 98/72 (OJ L295, 04.11.98, p 18) on food additives other than colours and sweeteners; and EC Commission Directive 98/86 (OJ L334, 09.12.98, p 1) on food additives other than colours and sweeteners. As to colours see PARA 366 ante; as to sweeteners see PARA 367 ante; and as to flavourings see PARA 369 post.

3 Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 3(1). For a list of permitted miscellaneous additives see reg 2(1), Schs 1-4 (Sch 1 amended by SI 1997/1413; and the Miscellaneous Food Additives Regulations 1995, SI 1995/3187, Schs 1, 2, 4 amended by and Sch 3 substituted by, SI 1999/1136). In order to be a permitted miscellaneous additive, the additive must satisfy the purity criteria set out in EC Commission Directive 96/77 (OJ L339, 30.12.96, p 1) (as amended) or specified or referred to in the Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 2(1), Sch 5 (as amended) for that additive: reg 2(1), Sch 5 (amended by SI 1999/1136).

4 Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 3(2)-(8), Schs 1-8 (reg 3(4), Schs 1-4, 6, 8 amended by, and Sch 7 substituted by, SI 1999/1136).

5 See the Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 2(5).

6 Ibid reg 2(5)(a).

7 Ibid reg 2(5)(b).

8 See ibid reg 4 (as amended).

9 Ibid reg 4(1) (substituted by SI 1997/1413).

10 Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 4(3), (4).

11 Ibid reg 4(2).

12 Ibid reg 5. In addition, only permitted miscellaneous additives may be used as a carrier or carrier solvent: see reg 5.

13 Ie the Miscellaneous Food Additives Regulations 1995, SI 1995/3187 (as amended).

14 Ibid reg 7(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))), s 36 (offences by bodies corporate) (see PARA 468 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 9 (amended by SI 1997/1413).

15 Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 8(a). In the case of export to another member state, the legislation complies with EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) (as amended), European Parliament and Council Directive 95/2 (OJ L61, 18.3.95, p 1) (as amended), and EC Commission Directive 96/77 (OJ L339, 30.12.96, p 1) (as amended): Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 8(b) (amended by SI 1997/1413).

16 For the meaning of 'food analyst' see PARA 267 note 13 ante. See further PARA 268 ante.

17 Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 6. As to the power to seize and destroy food under the Food Safety Act 1990 s 9 see PARA 284 ante.

18 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple): Miscellaneous Food Additives Regulations 1995, SI 1995/3187, reg 7(4). As to food authorities see PARA 251 et seq ante.

19 Ibid reg 7(3).

UPDATE

368 Miscellaneous food additives

TEXT AND NOTES--From 20 January 2010, EC Council Directive 95/2 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details phased implementation see art 33. SI 1995/3187 replaced with amendments by the Food Additives (England) Regulations 2009, SI 2009/3238, and the Food Additives (Wales) Regulations 2009, SI 2009/3378, which enforce Regulation 1333/2008 in relation to England and Wales respectively.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(3) ADDITIVES/369. Flavourings in food.

369. Flavourings in food.

The use of flavourings in foods is controlled by regulations implementing European Directives¹. No food may be sold which has in it or on it any added relevant flavouring² other than a permitted flavouring³. Unlike the provisions governing colours, sweeteners and miscellaneous additives⁴, the particular substances which may be used as flavourings and the quantities in which they may be used are not, for the most part, specified. However, quantities of certain substances used as flavourings are prescribed for a limited number of foods⁵.

No person may sell or advertise for sale any relevant flavouring for use as an ingredient in the preparation of food unless the flavouring is a permitted flavouring⁶. Flavourings must be sold in containers and requirements as to business sales or consumer sales of flavourings must be complied with⁷.

If any person contravenes or fails to comply with the requirements as to flavourings⁸ he is guilty of an offence⁹. It is a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence¹⁰.

Where any food is certified by a public analyst¹¹ as being food which it is an offence under these provisions to sell, the food may be seized and destroyed on the order of a justice of the peace as food failing to comply with food safety requirements, contrary to the Food Safety Act 1990¹².

Each food authority¹³ has a duty to enforce these provisions within its area¹⁴.

1 See the Flavourings in Food Regulations 1992, SI 1992/1971 (as amended), which implement EC Council Directive 88/388 (OJ L184, 15.7.88, p 61) (amended by EC Commission Directive 91/71 (OJ L42, 15.2.91, p 25)).

2 'Relevant flavourings' means material used or intended for use in or on food to impart odour, taste or both which does not consist entirely of excepted material and the components of which include at least one of the following: (1) a flavouring substance; (2) a flavouring preparation; (3) a process flavouring; or (4) a smoke flavouring: Flavourings in Food Regulations 1992, SI 1992/1971, reg 2(1)(b); and see reg 2(1)(c)-(f). Any edible substance (including herbs and spices) or product, intended for human consumption as such, with or without reconstitution, and any substance which has exclusively a sweet, sour or salt taste comprises excepted material: reg 2(4).

3 Ibid reg 3, Sch 2. A relevant flavouring is a permitted flavouring if it complies with the general purity criteria set out in reg 2(1)(g), Sch 1.

4 See PARAS 366-368 ante.

5 See the Flavourings in Food Regulations 1992, SI 1992/1971, Sch 1.

6 Ibid reg 4(1).

7 Ibid reg 4, Sch 3. The use of the word 'natural' in relation to flavourings is controlled: reg 5 (amended by SI 1994/1486).

8 See the Flavourings in Food Regulations 1992, SI 1992/1971 (as amended).

9 Ibid reg 7(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence)

(see PARA 269 ante), s 36 (offences by bodies corporate) (see PARA 460 post) apply: Flavourings in Food Regulations 1992, SI 1992/1971, reg 9.

10 Ibid reg 8.

11 For the meaning of 'public analyst' see PARA 267 note 13 ante. See further PARA 268 ante.

12 Flavourings in Food Regulations 1992, SI 1992/1971, reg 6. As to the power to seize and destroy food under the Food Safety Act 1990 s 9 see PARA 284 ante.

13 'Food authority' does not include the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1) (c) (which deals with the Inner Temple and the Middle Temple: Flavourings in Food Regulations 1992, SI 1992/1971, reg 7(3)). As to food authorities see PARA 251 et seq ante.

14 Ibid reg 7(2).

UPDATE

369 Flavourings in food

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--See the Smoke Flavourings (England) Regulations 2005, SI 2005/464; and the Smoke Flavourings (Wales) Regulations 2005, SI 2005/1350, which implement European Parliament and EC Council Regulation 2065/2003. Regulation 2065/2003 has been found to have been validly made under EC Treaty art 95 (see EUROPEAN COMMUNITIES vol 51 para 6-09): Case C-66/04 *United Kingdom v European Parliament* [2006] All ER (EC) 487, EC].

From 20 January 2011, EC Council Directive 88/388 is replaced by European Parliament and EC Council Regulation 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p 34); references to the repealed directive should be construed as references to Regulation 1334/2008: art 24. See also European Parliament and EC Council Regulation 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L354, 31.12.2008, p 1).

TEXT AND NOTE 10--SI 1992/1971 reg 8 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/4. COMPOSITION OF FOOD/(3) ADDITIVES/370. Extraction solvents.

370. Extraction solvents.

The use of extraction solvents¹ in the production of food is controlled by regulations which implement a European Directive². No person may sell, or import into Great Britain³ from outside the European Economic Community, any extraction solvent other than a permitted extraction solvent⁴, or any food having in it or on it any added extraction solvent other than a permitted extraction solvent⁵. Permitted extraction solvents may be used in or on food only if they have been used in accordance with the provisions which prescribe the foods with which they can be used and in accordance with the maximum permitted residue levels of such solvents⁶. In some cases the maximum is an absolute one, in others the residue must be in technically unavoidable quantities that present no danger to human health⁷. The provisions do not apply to any extraction solvent used in the production of food additives, vitamins or any other nutritional additive (except where specified)⁸.

The information to be given on labels or trade documents supplied with any permitted extraction solvent when it is sold or is imported into Great Britain from outside the European Economic Community is prescribed⁹.

Any person who contravenes or fails to comply with the requirements as to extraction solvents¹⁰ is guilty of an offence¹¹. It is a defence for the person charged to prove that the food or extraction solvent in respect of which the offence is alleged to have been committed was intended for export outside the European Economic Community and complied with the importing country's domestic legislation relevant to the alleged offence¹².

Each food authority¹³ is under a duty to enforce these provisions within its area¹⁴.

1 'Extraction solvent' means any solvent which is used or intended to be used in the extraction procedure and includes in any particular case, further to its use in such a procedure any substance other than such a solvent but deriving exclusively from such a solvent but deriving exclusively from such a solvent: Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 2(1). 'Extraction procedure' means either: (1) the extraction from a food of any ingredient or other component part of that food, including any contaminant which is in or on that food; or (2) the extraction of food from any other article or substance: reg 2(1).

2 See the Extraction Solvents in Food Regulations 1993, SI 1993/1658 (as amended), which implement EC Council Directive 88/344 (OJ L157, 24.6.88, p 28) (amended by EC Council Directive 92/115 (OJ L409, 31.12.92, p 31); European Parliament Council Directive 94/52 (OJ L331, 21.12.94, p 10); and European Parliament Council Directive 97/60 (OJ 331, 3.12.97, p 7)).

3 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

4 'Permitted extraction solvents' are those set out in the Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 2(1), Sch 1 Pt 1 (as amended), provided that they satisfy the general purity criteria specified in Sch 1 Pt 1 (as amended): reg 2(1), Sch 1 (amended by SI 1995/1440; and SI 1998/2257).

5 Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 4(1).

6 Ibid reg 4(2) (amended by SI 1998/2257), Extraction Solvents in Food Regulations 1993, SI 1993/1658, Schs 1 (as amended: see note 4 supra), 2 (substituted by SI 1998/2257).

7 See the Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 4(2) (as amended: see note 6 supra).

8 Ibid reg 3, Schs 1 (as amended: see note 4 supra), 2 (as substituted: see note 6 supra). 'Food additives', 'vitamins' and 'other nutritional additive' are not defined in the regulations. However, 'food additive' is consistently defined in EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) (as amended) and legislation under that Directive, and this may well be relevant; for this definition see eg para 368 note 2 ante.

9 Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 4(3), Sch 4.

10 le the provisions of the Extraction Solvents in Food Regulations 1993, SI 1993/1658 (as amended).

11 Ibid reg 5(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 7.

12 Ibid reg 6. It is also a defence for the person charged to prove that the food or extraction solvent was placed on the market or labelled before 27 April 1999: see regs 8, 9 (added by SI 1998/2257).

13 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England and Wales; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple): Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 5(3). As to food authorities see PARA 251 et seq ante.

14 Ibid reg 5(2).

UPDATE

370 Extraction solvents

NOTE 2--Directive 88/344 replaced: European Parliament and EC Council Directive 2009/32 (OJ L141, 6.6.2009, p 3).

TEXT AND NOTE 12--SI 1993/1658 reg 6 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

NOTE 8--From 20 January 2010, EC Council Directive 89/107 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33; for details of phased implementation see art 33.

370A. Food enzymes.

The use of food enzymes is controlled by a European Regulation¹. No person may place on the market a food enzyme or any food in which such a food enzyme has been used, unless it is included on the Community list of approved food enzymes².

A food enzyme may only be included on the list if:

- 1 1. it does not, on the basis of the available scientific evidence, pose a safety concern to the health of the consumer³;
- 2 2. there is reasonable technological need⁴; and
- 3 3. its use does not mislead the consumer in relation to issues such as the nature, freshness and quality of the ingredients used, the naturalness of a product or of the production process, or the nutritional quality of the product⁵.

Where relevant, other legitimate factors may be considered in addition to the above conditions⁶.

The Community list will give the name and specifications of the food enzyme as well as specifying the foods to which it may be added, any conditions under which it must be used, any restrictions on its sale directly to the final consumer, and any specific requirements as to the labelling of food in which the food enzyme has been used⁷.

The Regulation also makes rules on the labelling of food enzymes sold as such⁸.

1 European Parliament and EC Council Regulation 1332/2008 on food enzymes (OJ L354, 31.12.2008 p 7). The Regulation covers enzymes that are added to food to perform a technological function in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food: recital (4). For a full definition of 'food enzyme' see art 3.2. The Regulation does not apply to microbial cultures that are traditionally used in the production of food and which may incidentally produce enzymes, but which are not specifically used to produce them: art 2.4. As to the execution and enforcement of the Regulation in England, see the Food Enzymes Regulations 2009, SI 2009/3235. In relation to Wales, see the Food Enzymes (Wales) Regulations 2009, SI 2009/3377.

2 EC Council Regulation 1332/2008 art 4. For the common authorisation procedure governing the inclusion of substances on the list see European Parliament and EC Council Regulation 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L354, 31.12.2008, p 1).

3 EC Council Regulation 1332/2008 art 6(a). Producers or users of food enzymes are obliged to inform the EC Commission immediately of: any new scientific or technical information which might affect the assessment of the safety of a food enzyme: art 14.

4 EC Council Regulation 1332/2008 art 6(b).

5 EC Council Regulation 1332/2008 art 6(c).

6 EC Council Regulation 1332/2008 art 6.

7 EC Council Regulation 1332/2008 art 7.

8 EC Council Regulation 1332/2008 arts 10-13. Food enzymes, food enzyme preparations and food containing food enzymes placed on the market before 20 January 2010 which do not comply with the labelling provisions may be marketed until their date of minimum durability or use-by date: art 18.2.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(1) INTRODUCTION/371. Control of labelling and advertising of food.

5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD

(1) INTRODUCTION

371. Control of labelling and advertising of food.

The labelling and advertising of food is controlled in a number of ways by legislation. The law relating to the sale of goods may give a purchaser a remedy in a case of inaccurate or inadequate labelling¹. In addition, the offence of selling food not of the nature, substance or quality demanded may be committed if a food is falsely or misleadingly labelled², as may the offence of applying a false trade description³. There is also a more specific offence of applying a false or misleading label or advertisement⁴.

In addition to these particular offences, there are detailed requirements as to the labelling of foods in the Food Labelling Regulations 1996⁵ and in certain other regulations⁶.

1 See SALE OF GOODS AND SUPPLY OF SERVICES.

2 See PARAS 360-365 ante.

3 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq.

4 See PARA 372 post.

5 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARA 373 et seq post.

6 Ie the Food (Lot Marking) Regulations 1996, SI 1996/1502; the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768; and the regulations relating to particular foods: see PARAS 354, 356 ante, 414, 424 et seq post.

UPDATE

371 Control of labelling and advertising of food

NOTE 6--SI 2000/768 revoked: SI 2004/2335.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(2) FALSE OR MISLEADING LABELLING AND ADVERTISING/372. Offence of false labelling or advertisement.

(2) FALSE OR MISLEADING LABELLING AND ADVERTISING

372. Offence of false labelling or advertisement.

Any person who:

- 280 (1) gives with any food¹ sold by him, or displays with any food offered² or exposed³ by him for sale⁴ or in his possession⁵ for the purpose of sale, a label⁶, whether or not attached to or printed on the wrapper or container⁷ which either falsely describes⁸ the food or is likely to mislead⁹ as to its nature or substance or quality of the food¹⁰;
- 281 (2) publishes, or is a party to the publication¹¹ of, an advertisement¹² (not being such a label given or displayed by him as mentioned in head (1) above) which falsely describes any food or is likely to mislead as to the nature or substance or quality of any food¹³; or
- 282 (3) sells or offers or exposes for sale or has in his possession for the purpose of sale, any food the presentation¹⁴ of which is likely to mislead as to the nature or substance or quality of the food¹⁵,

is guilty of an offence¹⁶.

In proceedings for an offence under heads (1) or (2) above, the fact that a label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food does not preclude the court from finding that the offence was committed¹⁷.

1 For the meaning of 'food' see PARA 201 ante.

2 As to food offered for sale see PARA 282 note 14 ante.

3 As to food exposed for sale see PARA 282 note 15 ante.

4 For the meaning of 'sale' see PARA 262 note 5 ante. References to sale are to be construed as references to sale for human consumption: Food Safety Act 1990 s 15(5). For the meaning of 'human consumption' see PARA 201 note 3 ante.

5 As to the meaning of 'possession' see PARA 283 note 7 ante.

6 'Label' is not defined for the purposes of the Food Safety Act 1990. For the meaning of 'labelling' in the Food Labelling Regulations 1996, SI 1996/1499 (as amended) see PARA 375 note 3 post.

7 For the meaning of 'container' see PARA 264 note 6 ante.

8 A statement, although literally true, may be false by reason of what it omits: see *R v Lord Kylsant* [1932] 1 KB 442, CA; and *R v Bishirgian* [1936] 1 All ER 586, CCA. However, it is submitted that in such a case, it is more appropriate to the charge to allege that the description is misleading rather than false. A statement can be false even if it contains a contradiction which gives a clue that the allegedly false description does not mean what it appears to mean: see *Holmes v Pipers Ltd* [1914] 1 KB 57, 83 LJKB 285, DC (the court rejected an argument that 'Fine British Taragona Wine' was a contradiction in terms and therefore could deceive no one into thinking it was Taragona wine); *Kat v Diment* [1951] 1 KB 34, [1950] 2 All ER 657, DC ('non-brewed vinegar' held to be a false description of a solution of acetic acid and caramel since vinegar consists of a product of double fermentation).

The test seems to be what an ordinary person would understand by the description: see *Kingston-upon-Thames Royal London Borough Council v FW Woolworth & Co Ltd* [1968] 1 QB 802, [1968] 1 All ER 401, DC (where inexpensive cufflinks had been described as solid gold but the front was solid gold and the back was base metal it was held that they were not falsely described).

Appeal courts may not intervene in the absence of an error of law or a decision to which no court could come if properly directing itself: *Amos v Britvic Ltd* (1984) 149 JP 13, 4 Tr L 5, DC (where it was held that a label marked prominently 'Natural Orange Juice' which also bore the words 'a blend made with concentrated orange juice and orange juice' in relation to a product which contained no additives was not false even though water had been added and then removed).

Whether or not gain or advantage accrues from a false statement is irrelevant: see *Jones v Meatyard* [1939] 1 All ER 140, DC; *Stevens and Steeds Ltd and Evans v King* [1943] 1 All ER 314, DC. It would appear that the offence is absolute and knowledge of the falsity of a statement by the person who made it is immaterial: cf *R v Cummerson* [1968] 2 QB 534, [1968] 2 All ER 863, CA (a case under the Road Traffic Act 1960) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1013). As to misrepresentation see generally MISREPRESENTATION AND FRAUD.

9 The test for whether the description is likely to mislead is what an ordinary man understands by the language: *Concentrated Foods Ltd v Champ* [1944] KB 342 at 350, [1944] 1 All ER 272 at 276, DC, per Wrottesley J. The question whether the label offended against the Food and Drugs Act 1938 is one for the court and not for an expert witness: *Concentrated Foods Ltd v Champ* supra at 350 and 276 per Wrottesley J. See also *R v Mayling* [1963] 2 QB 717, [1963] 1 All ER 687, CCA (evidence that a particular person was prejudiced is not necessary); and *Curtis v Chemical Cleaning and Dyeing Co* [1951] 1 KB 805, [1951] 1 All ER 631, CA. The description used must be taken as a whole: see *GW Padley (Poultry) Ltd v Elkington* (1986, unreported, DC) (use of the word 'steak' in a label reading '2 Chicken Breast Steaks - Flaked and formed chicken in a crispy crumb', was held not to be misleading); and *Wolkind and Northcott v Pura Foods Ltd* (1987) 151 JP 492, 85 LGR 782, DC ('Pura Vegetable Lard' was held not to be misleading despite the argument that lard could only be properly used of pig fat). However, a label taken in its entirety may be misleading even if each element is true: *Van den Berghs & Jurgens Ltd v Burleigh* [1987] BTLC 337, Crown Court at Lewes (cartons marked 'Elmlea Single' and 'Elmlea Whipping' and illustrated with rural scenes held to be misleading even though the cartons were clearly labelled 'the real alternative to cream').

10 Food Safety Act 1990 s 15(1). For the meaning of 'substance' see PARA 201 note 4 ante. As to the nature, substance and quality of food see PARA 360 ante.

11 To publish is to make public: *Lambert and Lambert v Roberts Drug Stores Ltd* [1933] 2 WWR 508, Man CA (every delivery of a copy of a label is a fresh publication). See also *R v Carlisle* (1819) 1 Chit 451; *Boucicault v Chatterton* (1876) 5 ChD 267, CA.

12 For the meaning of 'advertisement' see PARA 225 note 5 ante.

13 Food Safety Act 1990 s 15(2).

14 For the meaning of 'presentation' see PARA 225 note 5 ante.

15 Food Safety Act 1990 s 15(3).

16 See *ibid* s 15(1), (2), (3). Any person guilty of such an offence is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both: s 35(2), (3). As to the statutory maximum see PARA 261 note 23 ante. As to penalties see PARA 468 post.

17 *Ibid* s 15(4).

UPDATE

372 Offence of false labelling or advertisement

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(i) Requirement to Label Food/373. Legislation.

(3) FOOD LABELLING

(i) Requirement to Label Food

373. Legislation.

The Food Labelling Regulations 1996¹ implement the Labelling, Presentation and Advertising of Foodstuffs Directive² and prescribe labelling requirements for food which is ready for delivery to the ultimate consumer³ or to a catering establishment⁴ and also make provision with regard to claims, nutrition, labelling and misleading descriptions of food⁵.

The regulations do not apply in respect of⁶:

- 283 (1) any food⁷, to which the provisions of the EEA Agreement⁸ apply, brought into Great Britain⁹ from an EEA State¹⁰ in which it was lawfully produced and sold¹¹;
- 284 (2) any food lawfully produced in another member state brought into Great Britain from a member state in which it was lawfully sold¹²; or
- 285 (3) any food lawfully produced outside the European Community brought into Great Britain from a member state in which it was in free circulation and lawfully sold¹³,

if certain conditions are met. The conditions are:

- 286 (a) certain requirements¹⁴ are met in respect of that food¹⁵;
- 287 (b) that food is marked or labelled, in a language easily understood by the consumer, with certain particulars¹⁶;
- 288 (c) the name of the food and any other descriptive information accompanying it is in accordance with certain requirements¹⁷; and
- 289 (d) where applicable, certain requirements are met in respect of that food¹⁸.

The regulations, except in so far as they relate to advertising, do not apply to any food which is not intended for sale for human consumption¹⁹.

1 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARA 371 et seq ante.

2 Ie EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of member states relating to the labelling, presentation and advertising of foodstuffs: see PARA 354 et seq ante.

3 'Ultimate consumer' means any person who buys otherwise than for the purpose of resale, for the purposes of a catering establishment or for the purposes of a manufacturing business: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). 'Catering establishment' means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation: reg 2(1). 'Preparation', in relation to food, includes manufacture and any form of processing or treatment, and 'prepared' is to be construed accordingly: reg 2(1). For the meaning of 'business' see PARA 201 note 3 ante.

4 See *ibid* Pt II (regs 4-39) (as amended); and PARAS 374-406 post.

5 See *ibid* Pt III (regs 40-43) (as amended); and PARAS 407-411 post. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption

that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence (as it applies for the purposes of ss 8, 14, 15)) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Food Labelling Regulations 1996, SI 1996/1499, reg 48 (substituted by SI 1999/747).

6 Food Labelling Regulations 1996, SI 1996/1499, reg 3(1) (substituted by SI 1998/1398). Nothing in heads (1)-(3) in the text is to prevent the enforcement of the Food Labelling Regulations 1996, reg 44(1)(a) (see PARA 411 post) in relation to a contravention of reg 31 (see PARA 398 post), or reg 44(1)(c), (d), (e) (see PARA 411 post): reg 3(1A) (added by SI 1998/1398).

7 For the meaning of 'food' see PARA 201 ante.

8 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (OJ L1, 3.1.94, p 1) as adjusted by the Protocol signed at Brussels on 17 March 1993 (OJ L1, 3.1.94, p 571): Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

9 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

10 'EEA State' means a state which is a contracting party to the EEA Agreement: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

11 Ibid reg 3(1)(a) (as substituted: see note 6 supra).

12 Ibid reg 3(1)(b) (as substituted: see note 6 supra).

13 Ibid reg 3(1)(c) (as substituted: see note 6 supra). For these purposes, 'free circulation' has the same meaning as in the Treaty Establishing the European Community (EC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 9.2 (see EUROPEAN COMMUNITIES): Food Labelling Regulations 1996, SI 1996/1149, reg 3(2).

14 Ie the requirements of EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) art 2.

15 Food Labelling Regulations 1996, SI 1996/1149, reg 3(1)(i) (as substituted: see note 6 supra).

16 Ibid reg 3(1)(ii) (as substituted: see note 6 supra). Particulars are provided for this marking or labelling in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1), arts 3, 4(2): Food Labelling Regulations 1996, SI 1996/1149, reg 3(1)(ii) (as so substituted).

17 Ibid reg 3(1)(iii) (as substituted: see note 6 supra). The name of the food and any other descriptive information must be in accordance with EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) art 5(1): Food Labelling Regulations 1996, SI 1996/1149, reg 3(1)(iii) (as so substituted).

18 Ibid reg 3(1)(iv) (as substituted: see note 6 supra). The requirements which must be met are those of EC Council Directive 87/250 (OJ L113, 30.4.87, p 57) on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer; EC Council Directive 89/398 (OJ L186, 30.6.89, p 27) (amended by EC Council Directive 96/84 (OJ L48, 19.2.97, p 20); EC Council Directive 99/41 (OJ L172, 8.7.99, p 38)) on the approximation of the laws of the member states relating to foodstuffs intended for particular nutritional use; EC Council Directive 90/496 (OJ L276, 6.10.90, p 40) on nutrition labelling for foodstuffs; EC Council Directive 94/54 (OJ L300, 23.11.94, p 14) (amended by EC Council Directive 96/21 (OJ L88, 5.4.96, p 5)) concerning the compulsory indication on the labelling of certain foodstuffs of particulars other than those provided for in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1): Food Labelling Regulations 1996, SI 1996/1149, reg 3(1)(iv) (as so substituted; and amended by SI 1999/747).

19 Food Labelling Regulations 1996, SI 1996/1149, reg 3(3)(a). For the meaning of 'human consumption' see PARA 201 note 3 ante. The regulations also do not apply to food supplied under government contracts for consumption by Her Majesty's forces or by a visiting force (within the meaning of the Visiting Forces Act 1952 Pt I (ss 1-12): see ARMED FORCES), and was prepared and labelled for sale before 16 November 1992: Food Labelling Regulations 1996, SI 1996/1149, reg 3(3)(b).

UPDATE

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NOTE 2--EC Council Directive 79/112 consolidated in European Parliament and EC Council Directive 2000/13 (amended by EC Commission Directive 2001/101 (amended by EC Commission Directive 2002/86), the Act of accession for the member states joining the European Union in 2004 and European Parliament and EC Council Directive 2003/89; and to be read with EC Commission Directives 99/10, 2002/67 and 2007/68): SI 1996/1499 reg 2(1) (definition substituted by SI 2004/2824 (England), SI 2004/3022 (Wales); and amended by SI 2008/1188 (England), SI 2008/1268 (Wales)). See also EC Commission Regulation 608/2004 (made pursuant to Directive 2000/13) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytosteranols and/or phytosteranol esters, which is implemented by the Food with Added Phytosterols or Phytosteranols (Labelling) (England) Regulations 2004, SI 2004/3344 (amended by SI 2005/2626); and the Food with Added Phytosterols or Phytosteranols (Labelling) (Wales) Regulations 2005, SI 2005/1224 (amended by SI 2005/3254).

EC Council Directive 2000/13 further amended: European Parliament and EC Council Directive 2003/89 (OJ L308, 25.11.2003 p 15); EC Commission Directive 2006/142 (OJ L368, 23.12.2006, p 110); EC Council Directive 2006/107 (OJ L363, 20.12.2006, p 411); EC Commission Directive 2007/68 (OJ L310, 28.11.2007, p 11); European Parliament and EC Council Regulation 1332/2008 (OJ L354, 31.12.2008 p 7); European Parliament and EC Council Regulation 1334/2008 (OJ L354, 31.12.2008 p 34); European Parliament and EC Council Regulation 596/2009 (OJ L188, 18.7.2009 p 14).

NOTE 6--In addition, nothing in heads (1)-(3) in the text is to prevent the enforcement of SI 1996/1499 reg 44(1)(a) in relation to a contravention of reg 34B (see PARA 401B) concerning any prepacked food either contained in an indelibly marked glass bottle intended for re-use and having no label, ring or collar, or the largest surface of whose packaging has an area of less than ten square centimetres: reg 3(1A)(aA) (added by SI 2004/2824 (England), SI 2004/3022 (Wales)).

NOTE 14--Now the requirements of EC Council Directive 2000/13: SI 1996/1499 reg 3(1) (i) (amended by SI 2003/2647 (England), SI 2004/249 (Wales)).

NOTE 18--EC Council Directive 89/398 (as further amended by EC Council Directive 99/41) implemented in part, in relation to England, by the Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007, SI 2007/181 (amended by SI 2010/295), and, in relation to Wales, by the Notification of Marketing of Food for Particular Nutritional Uses (Wales) Regulations 2007, SI 2007/1040. Directive 89/398 replaced: European Parliament and EC Council Directive 2009/39 (OJ L124, 20.5.2009, p 21); references to the repealed directive should be construed as references to Directive 2009/39 and read in accordance with the correlation table in Annex III: art 16. The requirements which must be met are now those of EC Council Directive 87/250, EC Council Directive 90/496, EC Council Directive 94/54, EC Council Directive 99/2 and EC Council Directive 2009/39: SI 1996/1499 reg 3(1)(iv) (substituted by SI 2010/295 (England), SI 2010/363 (Wales)). EC Council Directive 90/496 amended: EC Commission Directive 2003/120 (OJ L333, 20.12.2003, p 51), EC Commission Directive 2008/100 (OJ L285, 29.10.2008, p 9). Directive 94/54 repealed and replaced: EC Commission Directive 2008/5 (OJ L27, 31.1.2008, p 12) concerning the compulsory indication on the labelling of certain foodstuffs of particulars other than those provided for in Directive 2000/13 (codified version). References to the old directive are to be construed as references to Directive 2008/5 (see art 2 and Annex III).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(i) Requirement to Label Food/374. Application of the general labelling requirement.

374. Application of the general labelling requirement.

Part II of the Food Labelling Regulations 1996¹ applies to food² which is ready for delivery to the ultimate consumer³ or to a catering establishment⁴. With certain exceptions, Part II of the regulations does not apply, or applies only to a limited extent, to⁵: (1) any specified sugar product⁶; (2) any cocoa product or chocolate product⁷; (3) any honey⁸; (4) any condensed milk product or dried milk product as defined in the Condensed Milk and Dried Milk Regulations 1977 which is ready for delivery to a catering establishment other than any such product which is specially prepared for infant feeding and in the labelling of which there appears a classic statement that such food is intended for consumption by infants and no statement to the effect that such is intended for consumption by any other class of person⁹; (5) any coffee, coffee mixture, coffee extract products, chicory extract product or other designated product which is ready for delivery to a catering establishment¹⁰; (6) hen eggs¹¹; (7) spreadable fats¹²; (8) wines or grape musts¹³; (9) sparkling wines and aerated sparkling wines¹⁴; (10) liqueur wines, semi-sparkling wines and aerated semi-sparkling wines¹⁵; (11) spirit drinks¹⁶; (12) fresh fruit and vegetables¹⁷; (13) preserved sardines¹⁸; (14) preserved tuna and bonito¹⁹; (15) extraction solvents²⁰; (16) any drink bottled before 1 January 1983 which has an alcoholic strength by volume of more than 1.2 per cent and which is labelled in accordance with the legislation in force at the time of bottling²¹; (17) any food prepared on domestic premises for sale for the benefit of the person preparing it by a society registered under the Industrial and Provident Societies Act 1965²²; and (18) any food prepared otherwise than in the course of a business carried on by the person preparing it²³.

1 Ie the Food Labelling Regulations 1996, SI 1996/1499, Pt II (regs 4-39) (as amended).

2 For the meaning of 'food' see PARA 201 ante.

3 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 4(1), which is expressed to be subject to reg 4(2), (3) (see the text and notes 5-23 infra). For the meaning of 'catering establishment' see PARA 373 note 3 ante.

5 Ibid reg 4(2). The exceptions are reg 33 (foods packaged in certain gases: see PARA 400 post) and reg 34 (food containing sweeteners, added sugar and sweeteners, aspartame or polyols: see PARA 401 post) and, as they relate to regs 33, 34, reg 35 (general requirement as to manner of marking or labelling: see PARA 402 post) and reg 38 (intelligibility: see PARA 405 post).

6 See ibid reg 4(2)(a); and PARA 450 post. The reference to a specified sugar product in the text is as defined in the Specified Sugar Products Regulations 1976, SI 1976/509 (as amended): see PARA 450 post.

7 See the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(b); and PARA 428 post. The reference to cocoa product or chocolate product in the text is as defined in the Cocoa and Chocolate Products Regulations 1976, SI 1976/541: see PARA 428 post.

8 See the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(c); and PARA 434 post. The reference to honey in the text is as defined in the Honey Regulations 1976, SI 1976/1832 (as amended): see PARA 434 post.

9 See the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(d); and PARA 441 post. The reference to condensed milk product or dried milk product in the text is as defined in the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928 (as amended): see PARA 441 post. 'Milk' means the milk intended for sale, or sold, for human consumption of (1) one or more cows, and includes skimmed milk, semi-skimmed milk and whole milk; or (2) one or more ewes, goats or buffaloes: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

10 See *ibid* reg 4(2)(e); and PARA 429 post. The reference to coffee, coffee mixture, coffee extract product, chicory extract product or other designated product is as defined in the Coffee and Coffee Products Regulations 1978, SI 1978/1420 (as amended): see PARA 429 post.

11 See *ibid* reg 4(2)(f); and PARA 430 post. The reference to hen eggs in the text is in so far as their labelling is regulated by EC Council Regulation 1907/90 (OJ L173, 6.7.90, p 5 as read with Corrigendum at OJ L195, 26.7.90, p 40) (as amended) on certain marketing standards for eggs; EC Commission Regulation 1274/91 (OJ L121, 16.5.91, p 11) introducing detailed rules for implementing EC Regulation 1907/90 (OJ L173, 6.7.90, p 5) (as amended); and EC Council Decision 94/371 (OJ L168, 2.7.94, p 34) laying down specific public health conditions for the putting on the market of certain types of eggs: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(f).

12 See *ibid* reg 4(2)(g); and PARA 449 post. The reference to spreadable fats in the text is in so far as their labelling is regulated by EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) laying down standards for spreadable fats: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(g).

13 See *ibid* reg 4(2)(h); and PARA 455 post. The reference to wines or grape musts in the text is in so far as their labelling is regulated by EC Council Regulation 2392/89 (OJ L232, 9.8.89, p 3) (as amended) laying down general rules for the description and presentation of wines and grape musts: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(h). 'Wine' has the meaning assigned to it by EC Council Regulation 822/87 (OJ L84, 27.3.87) Annex I: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). 'Grape must' has the meaning assigned to it by EC Council Regulation 822/87 (OJ L84, 27.3.87, p 1) Annex I, on the common organisation of the market in wine: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

14 See *ibid* reg 4(2)(i); and PARA 455 post. The reference to sparkling wines or aerated sparkling wines in the text is in so far as their labelling is regulated by EC Council Regulation 2333/92 (OJ L231, 13.8.92, p 9) laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(i). 'Sparkling wine', 'aerated sparkling wine', 'semi-sparkling wine' and 'aerated semi-sparkling wine' (1) in relation to drinks produced in the European Community, have the meanings respectively assigned to them by EC Council Regulation 822/87 (OJ L84, 27.3.87, p 1) Annex I; and (2) in relation to drinks produced elsewhere, have the meanings respectively assigned to them by EC Council Regulation 2391/89 (OJ L232, 9.8.89, p 10) art 2: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

15 See *ibid* reg 4(2)(j); and PARA 455 post. The reference to liqueur wines, semi-sparkling wines and aerated semi-sparkling wines in the text is in so far as their labelling is regulated by EC Council Regulation 3895/91 (OJ L368, 31.12.91, p 1) and EC Commission Regulation 3901/91 (OJ L368, 31.12.91, p 15) laying down certain detailed rules on the description and presentation of special wines: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(j). 'Liqueur wine' (1) in relation to a drink produced in the European Community, has the meaning assigned to it by EC Council Regulation 822/87 (OJ L84, 27.3.87) Annex I; and (2) in relation to a drink originating from elsewhere, has the meaning assigned to it by EC Council Regulation 2391/89 (OJ L232, 9.8.89, p 10) art 2: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

16 See *ibid* reg 4(2)(k); and PARA 448 post. The reference to spirit drinks in the text is in so far as their labelling is regulated by EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) laying down general rules on the definition, description and presentation of spirit drinks; EC Commission Regulation 3773/89 (OJ L365, 15.12.89, p 48) laying down transitional measures relating to spirituous beverages (as amended); and EC Commission Regulation 1014/90 (OJ L105, 25.4.90, p 9) laying down detailed implementing rules on the definition, description and presentation of spirit drinks (as amended): see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(k).

17 See *ibid* reg 4(2)(l) (amended by SI 1998/1398); and PARA 432 post. The reference to fresh fruit and vegetables in the text is in so far as their labelling is regulated by EC Council Regulation 2200/96 (OJ L297, 21.11.96, p 1) (amended by EC Council Regulation 2520/97 (OJ L346, 17.12.97, p 41); EC Council Regulation 857/1999 (OJ L108, 27.4.99); and EC Council Regulation 1257/1999 (OJ L160, 26.6.99, p 80)) on the common organisation of the market in fruit and vegetables: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(l) (as so amended).

18 See *ibid* reg 4(2)(m); and PARA 431 post. The reference to preserved sardines in the text is in so far as their labelling is regulated by EC Council Regulation 2136/89 (OJ L212, 22.7.89, p 79) laying down common marketing standards for preserved sardines: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(m).

19 See *ibid* reg 4(2)(n); and PARA 431 post. The reference to preserved tuna and bonito in the text is in so far as their labelling is regulated by EC Council Regulation 1536/92 (OJ L163, 17.6.92, p 1) laying down common marketing standards for preserved tuna and bonito: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(n).

20 See *ibid* reg 4(2)(o); and PARA 370 ante. The reference to extraction solvents in the text is to any additive sold as such which is required to be labelled in accordance with of the Extraction Solvents in Food Regulations 1993, SI 1993/1658, reg 4(3) or the appropriate provisions of any of the additives regulations: see the Food Labelling Regulations 1996, SI 1996/1499, reg 4(2)(o). 'The additives regulations' means the Flavourings in Food Regulations 1992, SI 1992/1971 (as amended) (see PARA 369 ante); the Food Additives Labelling Regulations 1992, SI 1992/1978 (as amended) (see PARA 413 post); the Sweeteners in Food Regulations 1995, SI 1995/3123 (as amended) (see PARA 367 ante); the Colours in Food Regulations 1995, SI 1995/3124 (as amended) (see PARA 366 ante); and the Miscellaneous Food Additives Regulations 1995, SI 1995/3187 (as amended) (see PARA 368 ante): Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

21 *Ibid* reg 4(3)(a).

22 *Ibid* reg 4(3)(b). As to industrial and provident societies see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2394 et seq.

23 *Ibid* reg 4(3)(c).

UPDATE

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NOTE 11--EC Council Regulation 1907/90 replaced: EC Council Regulation 1028/2006 (OJ L186 7.7.2006, p 1) on marketing standards for eggs. For detailed rules implementing Regulation 1028/2006, see EC Commission Regulation 557/2007 (OJ L132, 24.5.2007, p 5) (as amended).

NOTE 16--EC Council Regulation 1576/89 replaced: European Parliament and EC Council Regulation 110/2008 (OJ L39, 13.2.2008, p 16) on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks. References made to the repealed regulation are to be construed as being made to Regulation 110/2008 (see art 29).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(i) Requirement to Label Food/375. General labelling requirement.

375. General labelling requirement.

Subject to certain regulations¹, all food to which Part II of the Food Labelling Regulations 1996² applies must be marked or labelled with³:

- 290 (1) the name of the food⁴;
- 291 (2) a list of ingredients⁵;
- 292 (3) the quantity of certain ingredients or categories of ingredients⁶;
- 293 (4) the appropriate durability indication⁷;
- 294 (5) any special storage conditions or conditions of use⁸;
- 295 (6) the name or business name and an address or registered office of either or both of (a) the manufacturer or packer; or (b) a seller established within the European Community⁹;
- 296 (7) particulars of the place of origin or provenance¹⁰ of the food if failure to give such particulars might mislead a purchaser to a material degree as to the true origin or provenance of the food¹¹; and
- 297 (8) instructions for use if it would be difficult to make appropriate use of the food in the absence of such instructions¹².

1 As to the regulations see PARA 390 post.

2 Ie the Food Labelling Regulations 1996, SI 1996/1499 Pt II (regs 4-39) (as amended).

3 Ibid reg 5, which is expressed to be subject to regs 6-39 (as amended). 'Marked' is not defined for the purposes of the Food Labelling Regulations 1996, SI 1996/1499 (as amended). However, the regulations do prescribe the manner of marking: see PARAS 402-406 post. 'Labelling', in relation to a food, includes any words, particulars, trade mark, brand name, pictorial matter or symbol relating to the food and appearing on the packaging of the food or on any document, notice, label, ring or collar accompanying the food: reg 2(1). There is no provision that the word 'labelled' has a cognate meaning.

4 Ibid reg 5(a). See further PARA 376 post. For the meaning of 'food' see PARA 201 ante.

5 Ibid reg 5(b). See further PARA 377-382 post. 'Ingredient' means any substance, including any additive and any constituent of a compound ingredient, which is used in the preparation of a food and which is still present in the finished product, even if in altered form, and a 'compound ingredient' must be composed of two or more such substances: reg 2(1).

6 Ibid reg 5(bA) (added by SI 1998/1398). See further PARA 383 post.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 5(c). See further PARAS 384-387 post.

8 Ibid reg 5(d).

9 Ibid reg 5(e); and see PARA 388 post.

10 The phrase 'true origin or provenance' is not defined for the purposes of the Food Labelling Regulations 1996, SI 1996/1499 (as amended). See further PARA 389 note 4 post.

11 Ibid reg 5(f); and see PARA 389 post.

12 Ibid reg 5(g).

UPDATE

375 General labelling requirement

NOTES 3, 5--SI 1996/1499 amended: SI 2004/1512, SI 2010/295 (England).

NOTE 5--Definition of 'ingredient' amended: SI 2009/3235 (England), SI 2009/3377 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(i) Requirement to Label Food/376. Name of the food.

376. Name of the food.

If there is a name prescribed by law for a food¹ then that name must be used as the name of the food². Such a name may be qualified by other words to make it more precise unless such qualification is prohibited³.

If there is no name prescribed by law for a food, a customary name, that is to say a name which is customary in the area where the food is sold⁴, may be used for the food⁵.

If there is no name prescribed by law for a food and there is no customary name or the customary name is not used, then the name used for the food must be sufficiently precise to inform a purchaser of the true nature of the food and to enable the food to be distinguished from products with which it could be confused and, if necessary, must include a description of its use⁶. The name of a food may consist of a name or a description, or of a name and a description, and it may contain more than one word⁷. A trade mark, brand name or fancy name may not be substituted for the name of a food⁸.

Where a purchaser could be misled by the omission of an indication that a food is powdered or is in any other physical condition, or that it has been dried, freeze-dried, frozen, concentrated or smoked or has been subjected to any other treatment, the name of the food must include or be accompanied by such an indication⁹.

The word 'wine'¹⁰ may be used in a composite name in the labelling¹¹ or advertising¹² of food for a drink which is not wine as defined in the Common Organisation in the Market in Wine Regulation¹³. However, the word 'wine' may not be used¹⁴ as part of a composite name which is likely to cause confusion with wine or table wine as defined in the Common Organisation of the Market in Wine Regulation¹⁵.

The composite name 'non-alcoholic wine' may not be used¹⁶, except for a drink derived from unfermented grape juice which is intended exclusively for communion or sacramental use and which is described clearly in its labelling or advertising, as the case may be, as being exclusively for such use¹⁷.

When the word 'wine' is used in a composite name for a drink which is derived from fruit other than grapes, that drink must be obtained by an alcoholic fermentation of that fruit¹⁸.

1 For the meaning of 'food' see PARA 201 ante.

2 Food Labelling Regulations 1996, SI 1996/1499, reg 6(1). For the purposes of regs 6(1), 7, 8(a), Sch 1, 'prescribed by law' means prescribed by European Community law or, in the absence of such law, by law in Great Britain: reg 6(4) (added by SI 1998/1398). For the meaning of 'Great Britain' see PARA 206 note 1 ante. Names are prescribed in many legislative provisions: see eg the EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) which requires that names such as 'butter' and 'margarine' must be used for particular product categories (see PARA 449 post); and the Food Labelling Regulations 1996, SI 1996/1499 (as amended) which prescribes names to be used for certain fish (see reg 6(2), Sch 1).

3 Ibid reg 6(3) (amended by SI 1998/1398).

4 'Sell' includes offer or expose for sale and have in possession for sale, and 'sale' and 'sold' must be construed accordingly: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

5 Ibid reg 7. Examples of customary names are 'fish fingers', 'Bakewell tart', 'muesli' and 'spaghetti'.

6 Ibid reg 8. Where a burger was sold under the name 'prize burger' at the same price both wholesale and retail as a burger produced by the same manufacturer known as the '100% burger', and the 100% burger consisted entirely of meat but the prize burger contained 14.81% of hydrated textured vegetable protein, the manufacturer was rightly convicted on the basis that the name prize burger was not sufficiently precise to enable the food to be distinguished from products with which it could be confused: *Birds Eye Walls Ltd v Shropshire County Council* (1994) 158 JP 961, DC. On the other hand in relation to two other products known as the 'chilli beef quarter pounder' (containing 11.75% of hydrated textured vegetable protein) and the 'chicken quarter pounder' (containing 7.72% of hydrated textured vegetable protein) where, in both cases, the actual meat content of the products was higher than that declared on the label, the manufacturers were rightly acquitted when charged with using a name which was not sufficiently precise to inform a purchaser of the true nature of the food: *Birds Eye Walls Ltd v Shropshire County Council* supra.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 9.

8 Ibid reg 10. This does not mean that such names cannot also be used in the labelling of food, however they do not count as the name required by the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

9 Ibid reg 11(1). Without prejudice to the generality of reg 11(1), the name used for any meat which has been treated with proteolytic enzymes must include or be accompanied by the word 'tenderised' (reg 11(2), Sch 2 para 1). The name used for a food which has been irradiated must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation' (Sch 2 para 2).

10 For the meaning of 'wine' see PARA 374 note 13 ante.

11 For the meaning of 'labelling' see PARA 375 note 3 ante.

12 For the meaning of 'advertise' see PARA 225 note 5 ante.

13 Food Labelling Regulations 1996, SI 1996/1499, reg 43(1). See EC Council Regulation 822/87 (OJ L300, 23.10.87, p 6) on the common organisation of the market in wine, Annex I. Each word that forms part of a composite name used pursuant to the Food Labelling Regulations 1996, SI 1996/1499, reg 43(1) must appear in lettering of the same type and colour and of such a height that the composite name is clearly distinguishable from other particulars: reg 43(3).

14 Ie pursuant to ibid reg 43(1): see reg 43(2).

15 Ibid reg 43(2). See EC Council Regulation 822/87 (OJ L300, 23.10.87, p 6) Annex I.

16 See note 14 supra.

17 Food Labelling Regulations 1996, SI 1996/1499, reg 43(4).

18 Ibid reg 43(5).

UPDATE

376 Name of the food

NOTE 2--SI 1996/1499 Sch 1 amended: SI 2003/461 (England), SI 2003/1635 (Wales). See also Fish Labelling (England) Regulations 2010, SI 2010/420; and Fish Labelling (Wales) Regulations 2003, SI 2003/1635 (amended by SI 2006/1339).

NOTE 7--See Case C-383/97 *Re Arnoldus van der Laan* [2000] 1 CMLR 563, ECJ (trade description must make it possible for purchaser to ascertain true nature of foodstuff).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/377. List of ingredients.

(ii) Ingredients

377. List of ingredients.

The list of ingredients¹ must be headed or preceded by an appropriate heading which consists of or includes the word 'ingredients'². When a food is marked or labelled with a list of ingredients, the ingredients must be listed in descending order of weight determined as at the time of their use in the preparation of the food³. Water and volatile products which are added as ingredients of a food must be listed in order of their weight in the finished product, the weight being calculated in the case of water by deducting from the total weight of the finished product the total weight of the other ingredients used⁴. Water which is added as an ingredient of a food must be declared in the list of ingredients of the food unless: (1) it is used in the preparation of the food solely for the reconstitution or partial reconstitution of an ingredient used in a concentrated or dehydrated form; or (2) it is used as or as part of a medium which is not normally consumed; or (3) it does not exceed 5 per cent of the finished product⁵. In the case of an ingredient which is used in a food in concentrated or dehydrated form and which is reconstituted during preparation of the food, the weight used in determining the order of the list of ingredients may be the weight of the ingredient before concentration or dehydration⁶. Where a food is in concentrated or dehydrated form and is intended to be reconstituted by the addition of water, its ingredients may be listed in descending order of their weight in the food when reconstituted as directed if the heading of the list of ingredients includes or is accompanied by the words 'ingredients of the reconstituted product' or 'ingredients of the ready to use product' or by some other indication to similar effect⁷.

Where a food consists of, or contains, mixed fruit, nuts, vegetables, spices or herbs and no particular fruit, nut, vegetable, spice or herb predominates significantly by weight, those ingredients may be listed otherwise than in descending order of weight if in the case of a food which⁸: (a) consists entirely of such a mixture, the heading of the list of ingredients includes or is accompanied by the words 'in variable proportion' or other words indicating the nature of the order in which the ingredients are listed⁹; and (b) contains such a mixture, that part of the list where the names of those ingredients appear is accompanied by the words 'in variable proportion' or other words indicating the nature of the order in which those ingredients are listed¹⁰.

1 For the meaning of 'ingredient' see PARA 375 note 5 ante.

2 Food Labelling Regulations 1996, SI 1996/1499, reg 12.

3 Ibid reg 13(1). For the meaning of 'preparation' see PARA 373 note 3 ante. For the meaning of 'food' see PARA 201 ante.

4 Ibid reg 13(2), which is expressed to be subject to reg 16 (see the text to note 5 infra).

5 Ibid reg 16(1). Water which is added to any frozen or quick frozen chicken carcase to which EC Commission Regulation 1538/91 (OJ L143, 7.6.91, p 1) (amended by EC Commission Regulation 2988/91 (OJ L284, 12.10.91, p 26); EC Commission Regulation 315/92 (OJ L34, 11.2.92, p 23); EC Commission Regulation 1980/92 (OJ L198, 17.7.92, p 31); EC Commission Regulation 2891/93 (OJ L263, 22.10.93, p 12); EC Commission Regulation 1026/94 (OJ L112, 3.5.94, p 32); EC Commission Regulation 3239/94 (OJ L338, 28.12.94, p 48); EC Commission Regulation 2390/95 (OJ L244, 12.10.95, p 60); EC Commission Regulation 205/96 (OJ L27, 3.2.96, p 6); EC Commission Regulation 1000/96 (OJ L134, 5.6.96, p 9)) applies need not be declared in the list of ingredients: Food Labelling Regulations 1996, SI 1996/1499, reg 16(2).

- 6 Ibid reg 13(3).
- 7 Ibid reg 13(4), which is expressed to be without prejudice to reg 12 (see the text to note 2 supra).
- 8 Ibid reg 13(5).
- 9 Ibid reg 13(5)(a).
- 10 Ibid reg 13(5)(b).

UPDATE

377 List of ingredients

NOTE 5--EC Commission Regulation 1538/91: further amended by EC Commission Regulations 1072/2000 (OJ L119 20.5.2000 p 21), 1321/2002 (OJ L194 23.7.2002 p 17), 814/2004 (OJ L153 30.4.2004 p 1), 81/2006 (OJ L14 19.1.2006 p 8), 433/2006 (OJ L79 16.3.2006 p 16).

TEXT AND NOTES 8-10--SI 1996/1499 reg 13(5) substituted, reg 13(6)-(8) added: SI 2004/2824 (England), SI 2004/3022 (Wales). SI 1996/1499 reg 13(8) amended: SI 2008/1188 (England), SI 2008/1268 (Wales).

Now, where a food consists of, or contains, mixed fruit, vegetables or mushrooms which are used in proportions that are likely to vary and no particular fruit, vegetable or mushroom predominates significantly by weight, those ingredients may be grouped together in the list of ingredients under the designation 'fruit', 'vegetables' or 'mushrooms' followed by the phrase 'in varying proportions', followed by a list of the fruit, vegetables or mushrooms present, and in such a case the total weight of the fruit, vegetables or mushrooms determines the order in which the entry appears in the list of ingredients: SI 1996/1499 reg 13(5) (as so substituted).

Where a food consists of, or contains, mixed spices or herbs and no particular spice or herb predominates significantly by weight, those ingredients may be listed otherwise than in descending order of weight if (1) in the case of a food which consists entirely of such a mixture, the heading of the list of ingredients includes or is accompanied by the words 'in variable proportion' or other words indicating the nature of the order in which the ingredients are listed; and (2) in the case of a food which contains such a mixture, that part of the list where the names of those ingredients appear is accompanied by the words 'in variable proportion' or other words indicating the nature of the order in which those ingredients are listed: reg 13(6) (as so added). Ingredients constituting less than two per cent of the finished product may be listed in a different order after the other ingredients: reg 13(7) (as so added). In the case of ingredients which (a) are similar or mutually sustainable; (b) are likely to be used in the preparation of a food without altering its nature or its perceived value; (c) are not additives, allergenic ingredients or ingredients originating from an allergenic ingredient referred to in Sch AA1 (see PARA 401B); and (d) constitute less than two per cent of the finished product, such ingredients may be referred to in the list of ingredients by means of the phrase 'contains ... and/or ...', where at least one of no more than two such ingredients is present in the finished product: SI 1996/1499 reg 13(8) (as so added and amended).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/378. Names of ingredients.

378. Names of ingredients.

The name used for any ingredient¹ in a list of ingredients must be a name which, if the ingredient in question were itself being sold² as a food³, could be used as the name of the food⁴. The name used in any list of ingredients for any food which has been irradiated must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation'⁵. Where a purchaser could be misled by the omission from the name used for an ingredient of any indication which, if the ingredient were itself being sold as a food, would be required to be included in or to accompany the name of the food, the name used for the ingredient in a list of ingredients must include or be accompanied by that indication unless the provision requiring the indication provides to the contrary⁶. Generic names⁷ may be used for specified ingredients⁸ in accordance with any conditions that are prescribed⁹.

1 For the meaning of 'ingredient' see PARA 375 note 5 ante.

2 For the meaning of 'sold' see PARA 376 note 4 ante.

3 For the meaning of 'food' see PARA 201 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 14(1).

5 Ibid reg 14(2). As to food irradiation see PARAS 320-324 ante.

6 Ibid reg 14(3), which is expressed to apply in any case other than one to which reg 14(2) (see the text to note 5 supra) applies.

7 I.e. a name which appears in ibid reg 14(4), Sch 3 Column 1.

8 I.e. specified in ibid Sch 3 Column 2.

9 Ibid reg 14(4). The text refers to conditions laid down in Sch 3 Column 3 (amended by SI 1998/1398): see the Food Labelling Regulations 1996, SI 1996/1499, reg 14(4). Examples of such generic names include 'cheese' for any type of cheese or mixture of cheese, 'fat' for any refined fat, and 'spice', 'spices' or 'mixed spices' for any spice or any combination of two or more spices: see Sch 3. Generic names may be subject to certain conditions of use: see Sch 3 Column 3.

UPDATE

378 Names of ingredients

TEXT AND NOTES 7-9--SI 1996/1499 reg 14(4) substituted: SI 2003/474 (England), SI 2003/832 (Wales). SI 1996/1499 reg 14(4) now subject to reg 34B (see PARA 401B): reg 14(4) (as so substituted) (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)). SI 1996/1499 Sch 3 amended in relation to England (SI 2003/474, SI 2004/2824, SI 2006/14 (amended by SI 2007/56)), and Wales (SI 2003/832, SI 2004/3022, SI 2006/31).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/379. Additives in list of ingredients.

379. Additives in list of ingredients.

Where an ingredient¹ which is a flavouring² is added to or used in a food it must be identified either by the word 'flavouring', or by a more specific name or description of the flavouring³.

The word 'natural', or any other word having substantially the same meaning may be used for an ingredient which is a flavouring only where the flavouring component of such an ingredient consists exclusively of: (1) a flavouring substance obtained by physical, enzymatic or microbiological processes, from material of vegetable or animal origin which material is either raw or has been subjected to a process normally used in preparing food for human consumption and to no process other than one normally so used; (2) a flavouring preparation; or (3) both head (1) and head (2) above⁴.

If the name of an ingredient being a flavouring refers to the vegetable or animal nature or origin of the material which it incorporates, the word 'natural', or any other word having substantially the same meaning, may not be used for that ingredient unless, in addition to satisfying the requirements of heads (1), (2) or (3) above, the flavouring component of that ingredient has been isolated by physical, enzymatic or microbiological processes, or by a process normally used in preparing food for human consumption, solely or almost solely from that vegetable or animal source⁵.

An additive which is added to or used in a food to serve the function of one of the categories of additive which must be identified in a list of ingredients by their category name⁶, must be identified by the name of that category followed by the additive's specific name or serial number⁷ (if any)⁸. An additive which is added to or used in a food to serve more than one such function must be identified by the name of the category that represents the principal function served by the additive in that food followed by the additive's specific name or serial number (if any)⁹. An additive which is required to be named in the list of ingredients of a food and which is neither a flavouring nor serves the function of one of the categories of the listed additives¹⁰ must be identified by its specific name¹¹.

1 For the meaning of 'ingredient' see PARA 375 note 5 ante.

2 'Flavouring' means an additive consisting of material used or intended for use in or on food to impart odour, taste or both, provided that such material does not consist entirely of: (1) any edible substance (including herbs and spices) or product, intended for human consumption as such, with or without reconstitution; or (2) any substance which has exclusively a sweet, sour or salt taste, and the components of which include at least one of the following: (a) a flavouring substance; (b) a flavouring preparation; (c) a process flavouring; (d) a smoke flavouring: Flavourings in Food Regulations 1992, SI 1992/1971, reg 2(1); Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). For the meaning of 'human consumption' see PARA 201 note 3 ante. For the meaning of 'food' see PARA 201 ante. 'Smoke flavouring', means an extract from smoke of a type normally used in food smoking processes: reg 2(1).

'Additive' means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has a nutritive value, the intentional addition of which to a food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of food results, or may be reasonably expected to result, in it or its by-products becoming directly or indirectly a component of such foods: reg 2(1).

'Flavouring substance' means a chemical substance with flavouring properties the chemical structure of which has been established by methods normally used among scientists and which is: (i) obtained by physical, enzymatic or microbiological processes from appropriate material of vegetable or animal origin; (ii) either obtained by chemical synthesis or isolated by chemical processes and which is chemically identical to a

substance naturally present in appropriate material of vegetable or animal origin; or (iii) obtained by chemical synthesis but not included under head (ii) supra: reg 2(1).

'Flavouring preparation' means a product (other than a flavouring substance), whether concentrated or not, with flavouring properties, which is obtained by physical, enzymatic or microbiological processes from appropriate material of vegetable or animal origin: reg 2(1). For the purposes of the definition 'flavouring substance' and the definition 'flavouring preparation': (A) distillation and solvent extraction are regarded as included among types of physical process; (B) material of vegetable or animal origin is appropriate material of vegetable or animal origin if it either is raw or has been subjected to a process normally used in preparing food for human consumption and to no process other than one normally so used; and (C) drying, torrefaction and fermentation are treated as included among the types of process normally so used to which head (B) supra refers: reg 2(1).

'Process flavouring' means a product which is obtained according to good manufacturing practices by heating to a temperature not exceeding 180° Celsius for a continuous period not exceeding 15 minutes a mixture of ingredients (whether or not with flavouring properties) of which at least one contains nitrogen (amino) and another is a reducing sugar: reg 2(1).

3 Ibid reg 14(5).

4 Ibid reg 14(6). In reg 14(6), (7) (see note 5 infra), distillation and solvent extraction are regarded as included among types of physical process, and drying, torrefaction and fermentation must be treated as included among the types of process normally used in preparing food for human consumption: reg 14(8).

5 Ibid reg 14(7). See note 4 supra.

6 I.e. the categories of additives listed in ibid reg 14(9), Sch 4 (as amended): see note 10 infra.

7 'Serial number' means the number specified for an additive in any of the additive regulations: ibid reg 14(11) (amended by SI 1999/1136). For the meaning of the 'additive regulations' see PARA 374 note 20 ante.

8 Food Labelling Regulations 1996, SI 1996/1499, reg 14(9).

9 Ibid reg 14(9).

10 The categories of additives are: acid, acidity regulator, anti-caking agent, anti-foaming agent, antioxidant, bulking agent, colour, emulsifier, emulsifying salts, firming agent, flavour enhancer, flour treatment agent, gelling agent, glazing agent, humectant, modified starch, preservative, propellant gas, raising agent, stabiliser, sweetener and thickener: see ibid Sch 4 (amended by SI 1998/1398).

11 Food Labelling Regulations 1996, SI 1996/1499, reg 14(10).

UPDATE

379 Additives in list of ingredients

NOTE 3--SI 1996/1499 reg 14(5) now subject to regs 14(5A) and 34B (see PARA 401B): SI 1996/1499 reg 14(5) (amended, in relation to England, by SI 2003/2647, and, in relation to Wales, by SI 2004/249). In the case of quinine or caffeine added to or used in a food as a flavouring, quinine or caffeine (as appropriate) must be identified by name immediately after the word 'flavouring': SI 1996/1499 reg 14(5A) (added by SI 2003/2647 (England), SI 2004/249 (Wales)).

NOTES 8, 9--SI 1996/1499 reg 14(9) now subject to reg 34B (see PARA 401B): reg 14(9) (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)).

TEXT AND NOTE 9--A food enzyme other than one referred to in SI 1996/1499 reg 17(b) or (c) (see PARA 381) must be identified by the appropriate category in Sch 4 followed by the specific name of that enzyme: reg 14(9A) (added by SI 2009/3235 (England), SI 2009/3377 (Wales)).

NOTE 10--SI 1996/1499 Sch 4 further amended: SI 2009/3235 (England), SI 2009/3377 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/380. Compound ingredients.

380. Compound ingredients.

Where a compound ingredient¹ is used in the preparation of a food² the names of the ingredients of the compound ingredient must be given in the list of ingredients of the food either instead of, or in addition to, the name of the compound ingredient itself³. If the name of the compound ingredient is given, it must be immediately followed by the names of its ingredients in such a way as to make it clear that they are ingredients of that compound ingredient⁴. The names of the ingredients of a compound ingredient need not be given in a case where the compound ingredient:

- 298 (1) would not be required to be marked or labelled⁵ with a list of ingredients if it were itself being sold⁶ prepacked⁷ as a food⁸;
- 299 (2) is identified in the list of ingredients by a generic name permitted by the regulations⁹; or
- 300 (3) constitutes less than 25 per cent of the finished product¹⁰.

1 For the meaning of 'compound ingredient' and 'ingredient' see PARA 375 note 5 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 15(1), which is expressed to be subject to reg 15(3), (4) in the text.

4 Ibid reg 15(2). In practice this is normally done by the use of parentheses.

5 For the meaning of 'labelling' see PARA 375 note 3 ante.

6 For the meaning of 'sold' see PARA 376 note 4 ante.

7 'Prepacked', in relation to a food, means put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging and is ready for sale to the ultimate consumer or to a catering establishment, and includes a food which is wholly enclosed in packaging before being offered for sale and which is intended to be cooked without opening the packaging and which is ready for sale to the ultimate consumer or to a catering establishment, but does not include individually wrapped sweets or chocolates which are not enclosed in any further packaging and which are not intended for sale as individual items: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). For the meaning of 'ultimate consumer' see PARA 373 note 3 ante; and for the meaning of 'catering establishment' see PARA 373 note 3 ante.

8 Ibid reg 15(3). As to foods which do not need to be marked or labelled with a list of ingredients when sold pre-packed see PARA 382 post.

9 Ibid reg 15(4)(a). The text refers to identification in accordance with reg 14(4) (see PARA 378 ante): reg 15(4)(a). As to generic names see PARA 378 ante.

10 Ibid reg 15(4)(b). However, subject to reg 17 (see PARA 381 post), any additive which is an ingredient of such a compound ingredient must be named in the list of ingredients in accordance with reg 15(2) (see the text to note 4 supra): reg 15(4)(b).

UPDATE

380 Compound ingredients

NOTES 8-10--SI 1996/1499 reg 15(3), (4) now subject to reg 34B (see PARA 401B): reg 15(3), (4) (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)).

TEXT AND NOTE 10--Now, head (3) the composition of the compound ingredient is defined in Community legislation and the compound ingredient constitutes less than two per cent of the finished product; or head (4) the compound ingredient consists of a mixture of spices or herbs or both and constitutes less than two per cent of the finished product: SI 1996/1499 reg 15(4)(b), (c) (reg 15(4)(b) substituted, reg 15(4)(c) added by SI 2004/2824 (England), SI 2004/3022 (Wales)). Subject to SI 1996/1499 reg 17 (see PARA 381), any additive which is an ingredient of such a compound ingredient must be named in the list of ingredients in accordance with reg 15(2), and where an ingredient of such a compound ingredient has been irradiated, the name of that ingredient and the words required by Sch 2 para 2 (see PARA 376) must be given, except in the case of food which is prepared for patients requiring sterile diets under medical supervision: reg 15(5), (6) (added by SI 2004/2824 (England), SI 2004/3022 (Wales)).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/381. Ingredients which do not need to be named.

381. Ingredients which do not need to be named.

The following ingredients¹ of a food² need not be named in its list of ingredients³:

- 301 (1) constituents of an ingredient which have become temporarily separated during the manufacturing process and are later re-introduced in their original proportions⁴;
- 302 (2) any additive⁵ whose presence in the food is due solely to the fact that it was contained in an ingredient of the food, if it serves no significant technological function in the finished product⁶;
- 303 (3) any additive which is used solely as a processing aid⁷; and
- 304 (4) any substance other than water⁸ which is used as a solvent or carrier for an additive and is used in an amount that is no more than that which is strictly necessary for that purpose⁹.

1 For the meaning of 'ingredient' see PARA 375 note 5 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 17.

4 Ibid reg 17(a).

5 For the meaning of 'additive' see PARA 379 note 2 ante.

6 Food Labelling Regulations 1996, SI 1996/1499, reg 17(b).

7 Ibid reg 17(c). 'Processing aid' means any substance not consumed as a food by itself, intentionally used in the processing of raw materials, foods or their ingredients, to fulfil a certain technological purpose during treatment or processing, and which may result in the unintentional but technically unavoidable presence of residues of the substance or its derivatives in the final product, provided that these residues do not present any health risk and do not have any technological effect on the finished product: reg 2(1). For the meaning of 'substance' see PARA 201 note 4 ante.

8 As to added water see PARA 377 ante.

9 Food Labelling Regulations 1996, SI 1996/1499, reg 17(d).

UPDATE

381 Ingredients which do not need to be named

TEXT AND NOTES--SI 1996/1499 reg 17 now subject to reg 34B (see PARA 401B): reg 17 (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)).

Also, head (5) any substance which is not an additive but which is used in the same way and for the same purpose as a processing aid: SI 1996/1499 reg 17(e) (added by SI 2004/2824 (England), SI 2004/3022 (Wales)).

TEXT AND NOTES 5-9--SI 1996/1499 reg 17(b)-(d) amended: SI 2009/3235 (England), SI 2009/3377 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/382. Foods which do not need to bear a list of ingredients.

382. Foods which do not need to bear a list of ingredients.

The following foods¹ do not need to be marked or labelled² with a list of ingredients³:

- 305 (1) fresh fruit and vegetables, including potatoes, which have not been peeled or cut into pieces⁴;
- 306 (2) carbonated water, to which no ingredient other than carbon dioxide has been added, and whose name indicates that it has been carbonated⁵;
- 307 (3) vinegar which is derived by fermentation exclusively from a single basic product and to which no other ingredient has been added⁶;
- 308 (4) cheese, butter, fermented milk⁷ and fermented cream⁸, to which no ingredient has been added other than lactic products, enzymes and micro-organism cultures essential to manufacture or, in the case of cheese other than fresh curd cheese and processed cheese, such amount of salt as is needed for its manufacture⁹;
- 309 (5) flour to which no substances have been added other than those which are required to be present in the flour¹⁰;
- 310 (6) any drink with an alcoholic strength by volume of more than 1.2 per cent¹¹;
- 311 (7) any food consisting of a single ingredient where the name of the food is identical with the name of the ingredient, or the name of the food enables the nature of the ingredient to be clearly identified¹².

Without prejudice to the requirement that the list of ingredients must be headed or preceded by an appropriate heading which consists of or includes the word 'ingredients'¹³, in the case of:

- 312 (a) any vinegar which is derived by fermentation exclusively from a single basic product and to which any other ingredient has been added¹⁴; or
- 313 (b) any cheese, butter, fermented milk or fermented cream, to which any ingredient, other than one which is mentioned in head (4) above, has been added¹⁵,

only those other added ingredients need to be named in the list of ingredients, if the heading of the list includes or is accompanied by the words 'added ingredients' or other words indicating that the list is not a complete list of ingredients¹⁶.

The labelling of any food that is not required to bear a list of ingredients must not include a list of ingredients unless the food is marked or labelled with a complete list of ingredients¹⁷ as if it were required to be so marked or labelled¹⁸.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 18(1). For the meaning of 'ingredient' see PARA 375 note 3 ante.

4 Ibid reg 18(1)(a).

5 Ibid reg 18(1)(b).

6 Ibid reg 18(1)(c).

7 For the meaning of 'milk' see PARA 374 note 9 ante.

8 'Cream' means that part of cows' milk rich in fat which has been separated by skimming or otherwise and which is intended for sale for human consumption: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

9 Ibid reg 18(1)(d).

10 Ibid reg 18(1)(e) (amended by SI 1998/1398). Substances required to be present in the flour are required by the Bread and Flour Regulations 1998, SI 1998/141, reg 4, Schs 1, 2 (see PARA 427 post): Food Labelling Regulations 1996, SI 1996/1499, reg 18(1)(e). For the meaning of 'substance' see PARA 201 note 4 ante.

11 Ibid reg 18(1)(f).

12 Ibid reg 18(1)(g) (added by SI 1998/1398).

13 See the Food Labelling Regulations 1996, SI 1996/1499, reg 12: see PARA 377 ante.

14 Ibid reg 18(2)(a).

15 Ibid reg 18(2)(b).

16 Ibid reg 18(2).

17 Ie marked or labelled with a complete list of ingredients in accordance with ibid regs 12, 13, 14 (as amended), 15, 16, 17: see PARAS 377-381 ante.

18 Ibid reg 18(3).

UPDATE

382 Foods which do not need to bear a list of ingredients

TEXT AND NOTES 1-12--SI 1996/1499 reg 18(1) now subject to reg 34B (see PARA 401B): reg 18(1) (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)).

NOTE 8--SI 1996/1499 further amended: SI 2004/1512, SI 2010/295 (England).

NOTE 17--Also, marked or labelled with a complete list of ingredients in accordance with SI 1996/1499 reg 34B (see PARA 401B): reg 18(3) (amended by SI 2004/2824 (England), SI 2004/3022 (Wales)).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ii) Ingredients/383. Indication of quantities of certain ingredients.

383. Indication of quantities of certain ingredients.

The quantity of an ingredient¹ or category of ingredients used in the preparation of a food² must be indicated where that ingredient or category of ingredients³:

- 314 (1) appears in the name of the food or is usually associated with that name by the consumer⁴;
- 315 (2) is emphasised on the labelling⁵ in words, pictures or graphics⁶; or
- 316 (3) is essential to characterise a food and to distinguish it from products with which it might be confused because of its name or appearance⁷.

Heads (1), (2) and (3) above do not apply:

- 317 (a) in respect of an ingredient or category of ingredients: (i) the drained net weight of which is indicated in accordance with relevant European Community provisions⁸; (ii) the quantities of which are already required to be given on the labelling under European Community provisions⁹; (iii) which is used in small quantities for the purposes of flavouring¹⁰; or (iv) which, though it appears in the name of the food, is not such as to govern the choice of the consumer because the variation in quantity is not essential to characterise the food or does not distinguish it from similar foods¹¹;
- 318 (b) where specific European Community provisions stipulate precisely the quantity of an ingredient or category of ingredients without providing for the indication thereof on the labelling¹²; or
- 319 (c) in specified cases¹³.

Heads (1) and (2) above do not apply in the case of any ingredient or category of ingredients covered by the indication 'with sweetener(s)' or 'with sugar(s)'¹⁴ and sweetener(s) if that indication accompanies the name of the food¹⁵, or in the case of any added vitamin or mineral if that substance is the subject of nutrition labelling relating to the food in question¹⁶.

The indication of quantity of an ingredient or category of ingredients required by heads (1), (2) and (3) above must be expressed as a percentage (which must be determined as at the time of use of the ingredient or category of ingredients in the preparation of the food) and must appear in or next to the name of the food, or in the list of ingredients in connection with the ingredient or category of ingredients in question¹⁷. In relation to the requirement to indicate the quantity of an ingredient or category of ingredients by means of a percentage¹⁸:

- 320 (A) where the food has lost moisture as a result of treatment, the indication of quantity of the ingredient or category of ingredients used must be expressed as a percentage which must be determined by reference to the finished product unless that quantity, or the total quantity of the ingredients or categories of ingredients indicated, would exceed 100 per cent, in which case the indication of quantity must be on the basis of the weight of the ingredient or category of ingredients used to prepare 100 grams of the finished product¹⁹;

- 321 (b) the indication of quantity of a volatile ingredient or category of volatile ingredients used must be on the basis of its proportion by weight in the finished product²⁰;
- 322 (c) the indication of quantity of an ingredient or category of ingredients which has been used in concentrated or dehydrated form and which is reconstituted during preparation of the food may be on the basis of its proportion by weight before concentration or dehydration²¹;
- 323 (d) where the food is in concentrated or dehydrated form and is intended to be reconstituted by the addition of water as directed in the labelling of the food, the indication of quantity of the ingredient or category of ingredients may be on the basis of its proportion by weight in the food when reconstituted as so directed²².

1 For the meaning of 'ingredient' see PARA 375 note 5 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 19(1) (substituted by SI 1998/1398; and amended by SI 1999/1483). The Food Labelling Regulations 1996, SI 1996/1499, reg 19(1) (as substituted and amended) is subject to heads (a), (b), (c), (A) and (B) in the text: reg 19(1) (as so substituted and amended). The requirement to indicate the quantities of certain ingredients is generally referred to as 'QUID', meaning 'quantitative ingredient declaration'.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 19(1)(a) (as substituted: see note 3 supra).

5 For the meaning of 'labelling' see PARA 375 note 3 ante.

6 Food Labelling Regulations 1996, SI 1996/1499, reg 19(1)(b) (as substituted: see note 3 supra).

7 Ibid reg 19(1)(c) (as substituted: see note 3 supra).

8 Ie in accordance with EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) art 8(4).

9 Ie under the requirements imposed by EC Council Directive 79/693 (OJ L205, 13.8.79, p 5) (fruit jams, jellies, marmalades and chestnut puree) (see PARA 435 post); or EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) (spreadable fats) (see PARA 449 post).

10 For the meaning of 'flavouring' see PARA 379 note 2 ante.

11 Food Labelling Regulations 1996, SI 1996/1499, reg 19(2)(a) (reg 19(2) substituted by SI 1998/1398).

12 Ibid reg 19(2)(b) (as substituted: see note 11 supra).

13 Ibid reg 19(2)(c) (as substituted: see note 11 supra). The specified cases are those referred to in reg 13(5) (see PARA 377 ante): reg 19(2)(c) (as so substituted).

14 'Sugars', in the context of nutrition labelling, means all monosaccharides and disaccharides present in food, but excludes polyols: ibid reg 2(1). 'Nutrition labelling' in relation to a food (other than a natural mineral water or other water intended for human consumption or any food supplement) means any information appearing on labelling (other than where such appears solely as part of a list of ingredients) and relating to energy value or any nutrient or to energy value and any nutrient, including any information relating to any substance which belongs to, or is a component of, a nutrient: reg 2(1). 'Nutrient', in the context of nutrition labelling, means any of the following: protein, carbohydrate, fat, fibre, sodium, any vitamin or mineral listed in Sch 6 Table A or B and present in any food in a significant amount as described in the note to those tables: reg 2(1). As to the presentation and contents of prescribed nutrition labelling see reg 41(3), (4), Sch 7. For the meaning of 'human consumption' see PARA 201 note 3 ante. For the meaning of 'substance' see PARA 201 note 4 ante.

15 Ibid reg 19(2A)(a) (reg 19(2A) added by SI 1999/1483). Any such indication accompanies the name of the food pursuant to the Food Labelling Regulations 1996, SI 1996/1499, reg 34 (see PARA 401 post): reg 19(2A)(a) (as so added).

16 Ibid reg 19(2A)(b) (as added: see note 15 supra).

17 Ibid reg 19(3) (substituted by SI 1998/1398; and amended by SI 1999/1483).

- 18 See the text to note 17 supra.
- 19 Food Labelling Regulations 1996, SI 1996/1499, reg 19(4)(a) (reg 19(4) added by SI 1999/1483).
- 20 Food Labelling Regulations 1996, SI 1996/1499, reg 19(4)(b) (as added: see note 19 supra).
- 21 Ibid reg 19(4)(c) (as added: see note 19 supra).
- 22 Ibid reg 19(4)(d) (as added: see note 19 supra).

UPDATE

383 Indication of quantities of certain ingredients

NOTE 8--Now in accordance with EC Council Directive 2000/13: SI 1996/1499 reg 19(2) (a) (amended, in relation to England, by SI 2003/2647, and, in relation to Wales, by SI 2004/249). See also PARA 373 NOTE 2.

NOTE 14--'Fibre' in the context of nutrition labelling, means carbohydrate polymers with three or more monomeric units, which are neither digested nor absorbed in the human small intestine and belong to the following categories: edible carbohydrate polymers naturally occurring in the food as consumed; edible carbohydrate polymers which have been obtained from food raw material by physical, enzymatic or chemical means and which have a beneficial physiological effect demonstrated by generally accepted scientific evidence; or edible synthetic carbohydrate polymers which have a beneficial physiological effect demonstrated by generally accepted scientific evidence: SI 1996/1499 reg 2(1) further amended: SI 2009/2538 (England), SI 2009/2705 (Wales). SI 1996/1499 Sch 7 amended, in relation to England, by SI 2009/2538, and in relation to Wales, by SI 2004/2558, SI 2009/2705.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/ (iii) Appropriate Durability Indication/384. Appropriate durability indication.

(iii) Appropriate Durability Indication

384. Appropriate durability indication.

Subject to certain exceptions, food must be marked or labelled with the appropriate durability indication¹. In the case of food which is highly perishable and in consequence is likely after a short period of time to constitute a danger to human health, a 'use by' date is required². In the case of other foods a 'best before' date is required³.

1 Food Labelling Regulations 1996, SI 1996/1499, reg 5(c), which is expressed to be subject to regs 6-39 (as amended). 'Appropriate durability indication' means in the case of a food: (1) other than one specified in head (2) *infra*, an indication of minimum durability; and (2) which from a microbiological point of view is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health, a 'use by' date: reg 2(1).

2 See PARA 386 post.

3 See PARA 385 post.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/ (iii) Appropriate Durability Indication/385. Form of indication of the 'best before' date.

385. Form of indication of the 'best before' date.

Where a best before date is required in respect of food¹, it must be indicated by the words 'best before' followed by²: (1) the date up to and including which the food can reasonably be expected to retain its specific properties if properly stored³; and (2) any storage conditions which need to be observed if the food is to retain its specific properties until that date⁴.

The date in the indication of minimum durability must be expressed in terms of a day, a month⁵ and a year⁶. However, the following exceptions apply:

- 324 (a) in the case of a food which can reasonably be expected to retain its specific properties for three months or less, it may be expressed in terms of a day and month only⁷;
- 325 (b) in the case of a food which can reasonably be expected to retain its specific properties for more than three months but not more than 18 months, it may be expressed in terms of a month and year only, if the words 'best before' are replaced by the words 'best before end'⁸; and
- 326 (c) in the case of a food which can reasonably be expected to retain its specific properties for more than 18 months, it may be expressed either in terms of a month and year only or in terms of a year only, if, in either case, the words 'best before' are replaced by the words 'best before end'⁹.

The date or the date and any storage conditions may appear separately from the words 'best before' or 'best before end' on the labelling of a food, provided that the words 'best before' or 'best before end' are followed by a reference to the place where the date, or the date and the storage conditions appear¹⁰.

1 See PARA 384 ante. For the meaning of 'food' see PARA 201 ante.

2 Ibid reg 20(1), which is expressed to be subject to reg 20(2), (3) (see the text to notes 6-10 infra).

3 Ibid reg 20(1)(a).

4 Ibid reg 20(1)(b).

5 For the meaning of 'month' see PARA 237 note 14 ante.

6 Food Labelling Regulations 1996, SI 1996/1499, reg 20(2).

7 Ibid reg 20(2)(a).

8 Ibid reg 20(2)(b).

9 Ibid reg 20(2)(c).

10 Ibid reg 20(3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/ (iii) Appropriate Durability Indication/386. Form of indication of the 'use by' date.

386. Form of indication of the 'use by' date.

Where a 'use by' date is required in respect of a food¹ it must be indicated by the words 'use by' followed by: (1) the date up to and including which the food, if properly stored, is recommended for use²; and (2) any storage conditions which need to be observed³. The 'use by' date must be expressed in terms either of a day and month, in that order, or of a day, a month and a year, in that order⁴.

Either (a) the date up to and including which a food required to bear a 'use by' date is recommended for use; or (b) that date and any storage conditions which need to be observed, may appear separately from the words 'use by', provided that those words are followed by a reference to the place where the date, or the date and the storage conditions, appears, or appear⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 Food Labelling Regulations 1996, SI 1996/1499, reg 21(1)(a).

3 Ibid reg 21(1)(b).

4 Ibid reg 21(2).

5 Ibid reg 21(3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/ (iii) Appropriate Durability Indication/387. Foods which do not need to bear an appropriate durability indication.

387. Foods which do not need to bear an appropriate durability indication.

The following foods¹ do not need to be marked or labelled² with an appropriate durability indication³:

- 327 (1) fresh fruit and vegetables (including potatoes but not including sprouting seeds, legume sprouts and similar products) which have not been peeled or cut into pieces⁴;
- 328 (2) wine⁵, liqueur wine⁶, sparkling wine⁷, aromatised wine⁸ and any similar drink obtained from fruit other than grapes⁹;
- 329 (3) any drink made from grapes or grape musts¹⁰;
- 330 (4) any drink with an alcoholic strength by volume of 10 per cent or more¹¹;
- 331 (5) any soft drink, fruit juice or fruit nectar or alcoholic drink, sold in a container containing more than 5 litres and intended for supply to catering establishments¹²;
- 332 (6) any flour confectionery¹³ and bread which, given the nature of its content, is normally consumed within 24 hours of its preparation¹⁴;
- 333 (7) vinegar¹⁵;
- 334 (8) cooking and table salt¹⁶;
- 335 (9) solid sugar and products consisting almost solely of flavoured or coloured sugars¹⁷;
- 336 (10) chewing gums and similar products¹⁸; and
- 337 (11) edible ices¹⁹ in individual portions²⁰.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 22.

4 Ibid reg 22(a). For the meaning of 'appropriate durability indication' see PARA 384 note 1 ante.

5 For the meaning of 'wine' see PARA 374 note 13 ante.

6 For the meaning of 'liqueur wine' see PARA 374 note 15 ante.

7 For the meaning of 'sparkling wine' see PARA 374 note 14 ante.

8 For these purposes 'aromatised wine' has the same meaning as in EC Council Regulation 1601/91 (OJ L149, 14.6.91, p 1) art 2 (see PARA 455 post): Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

9 Ibid reg 22(b).

10 Ibid reg 22(c). Any such drink must come within codes 2206 00 39, 2206 00 59 and 2206 00 89 of the Combined Nomenclature given in EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) (amended by EC Commission Regulation 2551/93 (OJ L241, 27.9.93, p 1): Food Labelling Regulations 1996, SI 1996/1499, reg 22(c). For the meaning of 'grape must' see PARA 374 note 13 ante.

11 Ibid reg 22(d).

12 Ibid reg 22(e).

13 'Flour confectionery' means any cooked food which is ready for consumption without further preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges,

crumpets, muffins, macaroons, ratafias, pastry and pastry cases, and also includes meringues, petits fours and uncooked pastry and pastry cases, but does not include bread, pizzas, biscuits, crispbread, extruded flat bread or any food containing a filling which has as an ingredient any cheese, meat, offal, fish, shellfish, vegetable protein material or microbial protein material: *ibid* reg 2(1). For the meaning of 'preparation' see *PARA* 373 note 3 ante; and for the meaning of 'ingredient' see *PARA* 375 note 5 ante. 'Biscuits' includes wafers, rusks and oatcakes: reg 2(1).

14 *Ibid* reg 22(f).

15 *Ibid* reg 22(g).

16 *Ibid* reg 22(h).

17 *Ibid* reg 22(i). For the meaning of 'sugars' see *PARA* 383 note 14 ante.

18 *Ibid* reg 22(j).

19 'Edible ice' includes ice-cream, water ice and fruit ice, whether alone or in combination, and any similar food: *ibid* reg 2(1).

20 *Ibid* reg 22(k).

UPDATE

387 Foods which do not need to bear an appropriate durability indication

NOTE 10--EC Council Regulation 2658/87 (OJ L256, 7.9.87, p 1) Annex I (containing the combined nomenclature) most recently replaced by EC Commission Regulation 1031/2008 (OJ L291, 31.10.2008, p 1) and amended by EC Council Regulation 880/2009 (OJ L254, 26.9.2009, p 1).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(iv) Particulars of Producer or Seller and Place of Origin/388. Particulars of producer or seller.

(iv) Particulars of Producer or Seller and Place of Origin

388. Particulars of producer or seller.

All food¹ to which Part II of the Food Labelling Regulations 1996² applies must be marked or labelled³ with the name or business name and an address or registered office of either or both of (1) the manufacturer or packer; or (2) a seller established within the European Community⁴.

If the name and address indicated are those of a manufacturer or a packer, there is no requirement that they should be established in the European Community because that requirement only applies in relation to the indication of a name of a seller⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 Ie the Food Labelling Regulations 1996, SI 1996/1499 Pt II (regs 4-39) (as amended).

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 5(e). Regulation 5 is expressed to be subject to regs 6-39 (as amended): see PARA 375 note 3 ante.

5 Case C-83/96 *Provincia Autonoma di Trento v Dega di Depretto Gino Snc* [1998] All ER (EC) 252, [1997] ECR I-5001, ECJ.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(iv) Particulars of Producer or Seller and Place of Origin/389. Place of origin.

389. Place of origin.

All food¹ to which Part II of the Food Labelling Regulations 1996² applies must be marked or labelled³ with particulars of the place of origin or provenance⁴ of the food if failure to give such particulars might mislead a purchaser to a material degree as to the true origin or provenance of the food⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 Ie the Food Labelling Regulations 1996, SI 1996/1499 Pt II (regs 4-39) (as amended).

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 The phrase 'true origin or provenance' is not defined for the purposes of the Food Labelling Regulations 1996, SI 1996/1499 (as amended). The definition of 'place of manufacture' for the purposes of the Trade Descriptions Act 1968 may assist, although that Act, unlike the Food Labelling Regulations 1996, SI 1996/1499 (as amended), is not derived from European legislation. For the purposes of the Trade Descriptions Act 1968, goods are deemed to have been manufactured or produced in the country in which they last underwent a treatment or process resulting in a substantial change: see the Trade Descriptions Act 1968 s 36; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 497.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 5(f). Regulation 5 is expressed to be subject to regs 6-39 (as amended): see PARA 375 note 3 ante. The language used in the labelling of a food may make the labelling misleading as to the origin of the food: Case 6 U 173/87: *Re Labelling of Dutch Poultry* [1990] 2 CMLR 104, Cologne CA.

UPDATE

389 Place of origin

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/390. Food which is not prepacked, food which is prepacked for direct sale and certain confectionery products.

(v) Omission of Certain Particulars

390. Food which is not prepacked, food which is prepacked for direct sale and certain confectionery products.

The following foods¹ do not need to be marked or labelled² with any of the particulars specified in the general labelling requirement other than the name of the food³: (1) food which is not prepacked⁴; (2) food which is prepacked for direct sale⁵; (3) any flour confectionery which is packed in a crimp case only or in wholly transparent packaging which is either unmarked or marked only with an indication of the price of the food and any lot marking indication⁶, if there is not attached to the flour confectionery or its packaging any document, notice, label, ring or collar (other than a label (or labels) on which only the price of the food and any lot marking indication are marked)⁷; and (4) individually wrapped fancy confectionery products⁸ which are not enclosed in any further packaging and which are intended for sale as single items⁹.

In the case of food listed in heads (1) to (4) above which has not been irradiated¹⁰ and which is: (a) not exposed for sale; or (b) white bread or flour confectionery; or (c) carcasses and parts of carcasses which are not intended for sale in one piece, the food is not even required to be marked or labelled with the name of the food¹¹.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 23(2). The particulars are those specified in reg 5: see PARA 375 ante. In the case of milk the particulars required by reg 5(f) (where the appropriate circumstances described in reg 5 apply) and, if such milk is raw milk, the particulars required by reg 5(e)(i) must be marked: see reg 23(2). The foods listed in heads (1)-(4) in the text also do not need to be marked or labelled, where but for reg 23 (as amended) they would otherwise be required, with any of the particulars specified in reg 32 (products consisting of skimmed milk together with non-milk fat) (see PARA 399 post), reg 33 (foods packaged in certain gases) (see PARA 400 post), and reg 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) (see PARA 401 post): reg 23(2) (amended by SI 1998/1398). 'Raw milk', in relation to cows' milk, has the meaning assigned to it by EC Council Regulation 2597/97 (OJ L351, 23.12.97, p 13) laying down additional rules on the common organisation of the market in milk and milk products for drinking milk, and in relation to the milk of ewes, goats or buffaloes means milk which has neither been heat-treated beyond 40° Celsius nor undergone any treatment having the same effect: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1) (amended by SI 1998/2424).

4 For the meaning of 'prepacked' see PARA 380 note 7 ante.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 23(1)(a). Regulation 23(1)(a) does not apply to any food to which reg 27 applies: see PARA 394 post. 'Prepacked for direct sale' means: (1) in relation to a food other than flour confectionery, bread, edible ices and cows' milk, prepacked by a retailer for sale by him on the premises where the food is packed or from a vehicle or stall used by him; (2) in relation to flour confectionery, bread and edible ices, prepacked by a retailer for sale as in head (1) supra, or prepacked by the producer of the food for sale by him either on the premises where the food is produced or on other premises from which he conducts business under the same name as the business conducted on the premises where the food is produced; and (3) in relation to cows' milk, put into containers on the premises where the milk is produced by the person owning or having control of the herd from which the milk is produced for sale by him on those premises or from a vehicle or stall used by him: reg 2(1). For the meaning of 'flour confectionery' see PARA 387 note 13 ante; for the meaning of 'edible ices' see PARA 387 note 19 ante; for the meaning of 'milk' see PARA 374 note 9 ante; and for the meaning of 'business' see PARA 201 note 3 ante.

6 le any lot marking indication given in accordance with the Food (Lot Marking) Regulations 1996, SI 1996/1502: see PARA 414 post.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 23(1)(b).

8 'Fancy confectionery product' means any confectionery product in the form of a figure, animal, cigarette or egg or in any other fancy form: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). 'Confectionery product' means any item of chocolate confectionery or sugar confectionery: reg 2(1).

9 Ibid reg 23(1)(c).

10 'Irradiated' means subjected to treatment by ionising radiation: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). As to irradiation of food see PARAS 320-324 ante.

11 Ibid reg 23(3). The particulars for milk (see note 3 supra) are also not required to be marked or labelled in such cases.

UPDATE

390 Food which is not prepacked, food which is prepacked for direct sale and certain confectionery products

NOTE 3--SI 1996/1499 reg 23(2) amended, Sch 4A (meat products not required to bear indication of quantity of an ingredient or category or ingredients sold, prepared, or prepared for direct sale) added: SI 2003/2075 (England), SI 2004/1396 (Wales).

In the case of a meat product other than one listed in SI 1996/1499 Sch 4A, a declaration is required in accordance with reg 5(bA) (see PARA 375) as to the quantity of certain ingredients or categories of ingredients: SI 1996/1499 reg 23(2) (amended by SI 2003/2075 (England), SI 2004/1396 (Wales)).

NOTES 5, 9--Food falling within SI 1996/1499 reg 23(1)(a) or (c) need not be marked or labelled with any of the particulars specified in regs 34B or 34C (see PARAS 401B, 401C): reg 23(2A) (added by SI 2004/2824 (England), SI 2004/3022 (Wales), amended by SI 2005/899 (England) (not yet in force), SI 2005/1309 (Wales) (not yet in force).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/391. Circumstances in which additives must be indicated.

391. Circumstances in which additives must be indicated.

Any food¹ which (1) by virtue of the provision relating to food which is not prepacked, food which is prepacked for direct sale, and food which is flour confectionery or fancy confectionery², is not marked or labelled³ with a list of ingredients⁴; and (2) contains any additive⁵ which (a) but for that provision, would be required to be named in the list of ingredients of the food; and (b) was added to or used in the food or an ingredient of the food to serve the function of an antioxidant, colour, flavouring⁶, flavour enhancer, preservative or sweetener, must be marked or labelled with an indication of every such category of additive that is contained in the food⁷.

However, any edible ice⁸ or flour confectionery⁹ which, but for this provision, would be required to be marked or labelled in accordance with heads (1) and (2) above does not need to be so marked or labelled if there is displayed in a prominent position near the edible ice or flour confectionery a notice stating¹⁰ that edible ices or flour confectionery, as the case may be, sold at the establishment where the notice is displayed may contain such categories of additives¹¹.

The provisions relating to the indication of additives do not apply to food which is not exposed for sale¹².

1 For the meaning of 'food' see PARA 201 ante.

2 Ie by virtue of the Food Labelling Regulations 1996, SI 1996/1499, reg 23 (as amended): see PARA 290 ante.

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Ie by virtue of the Food Labelling Regulations 1996, SI 1996/1499, reg 23 (as amended) alone: see PARA 290 ante. For the meaning of 'ingredient' see PARA 375 note 5 ante.

5 For the meaning of 'additive' see PARA 379 note 2 ante.

6 For the meaning of 'flavouring' see PARA 379 note 2 ante.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 24(1), which is expressed to be subject to reg 24(2)-(4): see the text and notes 8-12 infra.

8 For the meaning of 'edible ice' see PARA 387 note 19 ante.

9 For the meaning of 'flour confectionery' see PARA 387 note 13 ante.

10 Ie subject to the Food Labelling Regulations 1996, SI 1996/1499, reg 23(3). Where, in the circumstances described in reg 24(1) (see the text to note 7 supra) or reg 24(2) (see the text to note 11 infra), an additive serves more than one of the functions specified in reg 24(1), it is only necessary to indicate that category which represents the principal function served by the additive in the food or ingredient to which it was added or in which it was used: reg 24(3).

11 See *ibid* reg 24(2).

12 *Ibid* reg 24(4).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/392. Circumstances in which irradiation must be indicated.

392. Circumstances in which irradiation must be indicated.

Any food¹ which (1) by virtue of the provision relating to food which is not prepacked, food which is prepacked for direct sale, and food which is flour confectionery or fancy confectionery, is exempted from the requirement to be marked or labelled² with a list of ingredients³; and (2) contains any ingredient which has been irradiated⁴ (and which comprises a particular with which, had that food not been subject to that exemption, the food would have been required by the Food Labelling Regulations 1996⁵ to be marked or labelled), must be marked or labelled with an indication that it contains that ingredient, and in such a case the reference within that indication to that ingredient must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation'⁶.

The provision requiring an indication of irradiated ingredients does not apply to food which is not exposed for sale⁷.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 I.e. by virtue of the Food Labelling Regulations 1996, SI 1996/1499, reg 23 (as amended) alone: see PARA 390 ante. For the meaning of 'ingredient' see PARA 375 note 5 ante.

4 For the meaning of 'irradiated' see PARA 390 note 8 ante. As to irradiated food see PARAS 320-324 ante.

5 I.e. the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

6 Ibid reg 25(1). 'Ionising radiation' means any gamma rays, x-rays or corpuscular radiations which are capable of producing ions either directly or indirectly other than those rays or radiations: (1) which are emitted by measuring or inspection devices; (2) which are emitted at an energy level no higher than the appropriate maximum level; and (3) the dose of energy imparted by which does not exceed 0.5 Gy, and for the purposes of this definition the appropriate maximum level is 10 MeV in the case of x-rays and 5 MeV otherwise: reg 2(1).

7 Ibid reg 25(2).

UPDATE

392 Circumstances in which irradiation must be indicated

NOTE 6--For '0.5Gy' read '0.01 Gy in the case of inspection devices which utilise neutrons and 0.5 Gy otherwise', and for 'and 5 MeV otherwise' read ', 14 MeV in the case of neutrons and 5 MeV otherwise': SI 1996/1499 reg 2(1) (amended, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/393. Small packages and certain indelibly marked bottles.

393. Small packages and certain indelibly marked bottles.

Any prepacked¹ food², either contained in an indelibly marked glass bottle³ intended for re-use and having no label, ring or collar, or the largest surface of whose packaging has an area of less than ten square centimetres, need not⁴ by virtue of the Food Labelling Regulations 1996⁵ be marked or labelled⁶ with any of the particulars specified in the general labelling requirement⁷ except the name of the food and, unless the food is not required to be marked or labelled with such an indication, the appropriate durability indication⁸, or any other specified particulars⁹, where but for this provision they would otherwise be required¹⁰.

Any prepacked food¹¹ which: (1) is sold or supplied as an individual portion; and (2) is intended as a minor accompaniment to either another food, or another service¹², need not be marked or labelled with any of the particulars specified in the general labelling requirement¹³ except the name of the food nor, where but for this provision they would otherwise be required, with any other specified particulars¹⁴.

The provisions relating to small packages and certain indelibly marked bottles do not apply to any food: (a) to which the provisions relating to food which is not prepacked, food which is prepacked for direct sale, and food which is flour confectionery or fancy confectionery¹⁵ apply; or (b) to which the provisions relating to certain food sold at catering establishments¹⁶ apply¹⁷.

1 For the meaning of 'prepacked' see PARA 380 note 7 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 See note 8 infra.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 26(1).

5 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

6 For the meaning of 'labelling' see PARA 375 note 3 ante.

7 Ie specified in the Food Labelling Regulations 1996, SI 1996/1499, reg 5: see PARA 375 ante.

8 For the meaning of 'appropriate durability indication' see PARA 384 note 1 ante. As to the appropriate durability indication see PARAS 384-387 ante. Any bottle referred to in ibid reg 26(1) (as amended) need not where it contains milk, or where it contains any other food, in which case until 1 January 1997, be marked or labelled with an appropriate durability indication: reg 26(5). For the meaning of 'milk' see PARA 374 note 9 ante.

9 Ie the particulars specified in ibid reg 33 (foods packaged in certain gases) (see PARA 400 post) and reg 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) (see PARA 401 post).

10 Ibid reg 26(1)(a) (reg 26(1)(a), (b) substituted by SI 1999/747), which is expressed to be subject to the Food Labelling Regulations 1996, SI 1996/1499, reg 26(2)-(5): see the text and notes 12-19 infra. In relation to Wales, such prepacked food also does not need to be marked or labelled with the GMO particulars, where but for reg 26 (as amended) they would otherwise be required: reg 26(1)(b) (as so substituted). Regulation 26(1)(b) (as substituted) has been revoked in relation to England: see the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 11(1), (4)(a). 'The GMO particulars' means the additional specific labelling particulars required by EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) art 2(3): Food Labelling Regulations 1996, SI 1996/1499, reg 2(1) (definition added by SI 1999/747).

Any bottle which contains milk must also be marked or labelled with the particulars of the place of origin or provenance of the food where such an indication would be required by the Food Labelling Regulations 1996, SI 1996/1499, reg 5(f) (see PARA 375 ante) and, if such milk is raw milk, with the particulars of the name or

business name and an address or registered office of the manufacturer or packer required by reg 5(e)(i) (see PARA 375 ante); reg 26(2).

11 Such prepacked food includes butter and other fat spreads, milk, cream and cheeses, jams and marmalades, mustards, sauces, tea, coffee and sugar: *ibid* reg 26(3) (amended by SI 1999/747). For the meaning of 'cream' see PARA 382 note 9 ante.

12 Such other service includes the provision of sleeping accommodation at an hotel or other establishment at which such accommodation is provided by way of trade or business: Food Labelling Regulations 1996, SI 1996/1499, reg 26(3) (as amended: see note 13 *supra*). For the meaning of 'business' see PARA 201 note 3 ante.

13 *Ie* the particulars specified in *ibid* reg 5: see PARA 375 ante.

14 *Ibid* reg 26(3) (as amended: see note 13 *supra*). The other particulars are those specified in reg 32 (products consisting of skimmed milk together with non-fat milk) (see PARA 399 post) and, in the case of any food to which reg 26(1) (as amended) applies, the particulars specified in reg 33 (foods packaged in certain gases) (see PARA 400 post) and reg 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols): reg 26(3A) (added by SI 1999/747; and substituted by SI 1999/1483). In relation to Wales, the other particulars include the GMO particulars: Food Labelling Regulations 1996, SI 1996/1499, reg 26(3A) (as so added and substituted); Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 11(1), (4)(b).

15 *Ie* food to which the Food Labelling Regulations 1996, SI 1996/1499, reg 23 applies: see PARA 390 ante. For the meanings of 'fancy confectionery product' and 'confectionery product' see PARA 390 note 8 ante.

16 *Ie* food to which *ibid* reg 27 applied: see PARA 394 post.

17 *Ibid* reg 26(4).

UPDATE

393 Small packages and certain indelibly marked bottles

NOTES 9, 10--Also the particulars specified in SI 1996/1499 reg 34C (as added) (see PARA 401C): reg 26(1)(a) (amended by SI 2005/899 (England) (not yet in force), SI 2005/1309 (Wales) (not yet in force)).

NOTES 10, 14--SI 2000/768 revoked: SI 2004/2335.

TEXT AND NOTE 17--Any food which (1) by virtue of SI 1996/1499 reg 26(1) or (3) alone is exempted from the requirement to be marked or labelled with a list of ingredients; (2) contains any ingredient which has been irradiated; and (3) is not prepared for patients requiring sterile diets under medical supervision, must be marked or labelled with an indication that it contains that ingredient, and in such a case the reference within that indication to that ingredient must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation': reg 26(4A) (added, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/394. Catering food sold at catering establishments.

394. Catering food sold at catering establishments.

Any food¹ which is sold² at a catering establishment³ and is either not prepacked⁴, or is prepacked for direct sale⁵, does not need to be marked or labelled with any of the particulars specified by the general labelling requirement⁶ nor, where but for this provision they would otherwise be required, with specified particulars⁷.

In the case of any such food being milk⁸ which is prepacked for direct sale it must be marked or labelled with the particulars of the place of origin or provenance of the food (where the appropriate circumstances described apply⁹) and, if such milk is raw milk, with the name or business name and an address or registered office of the manufacturer or packer¹⁰.

In the case of any such food which has been irradiated¹¹ that food must be marked or labelled with an indication of such treatment, which indication must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation'¹².

In the case of any such food which contains an ingredient¹³ which has been irradiated (and which comprises a particular with which, had that food been prepacked, the food would have been required by the Food Labelling Regulations 1996¹⁴ to be marked or labelled), that food must, subject to certain exceptions¹⁵, be marked or labelled with an indication that it contains that ingredient and the reference within that indication to that ingredient must include or be accompanied by the word 'irradiated' or the words 'treated with ionising radiation'¹⁶.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'sold' see PARA 376 note 4 ante.

3 For the meaning of 'catering establishment' see PARA 373 note 3 ante.

4 For the meaning of 'prepacked' see PARA 380 note 7 ante.

5 For the meaning of 'prepacked for direct sale' see PARA 390 note 5 ante.

6 I.e. specified by the Food Labelling Regulations 1996, SI 1996/1499, reg 5: see PARA 375 ante. For the meaning of 'labelling' see PARA 375 note 3 ante.

7 Ibid reg 27(1). The text refers to the particulars specified in reg 32 (products consisting of skimmed milk together with non-fat milk) (see PARA 399 post), reg 33 (foods packaged in certain gases) (see PARA 400 post) and reg 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) (see PARA 401 post).

8 For the meaning of 'milk' see PARA 374 note 9 ante.

9 I.e. in accordance with the requirements of the Food Labelling Regulations 1996, SI 1996/1499, reg 5(f): see PARA 375 ante.

10 Ibid reg 27(2). The marking or labelling of the name or business name and address or registered office of the manufacturer or packer is in accordance with the requirements of reg 5(e)(i) (see PARA 375 ante): see reg 27(2).

11 For the meaning of 'irradiated' see PARA 390 note 8 ante. As to irradiated food see PARAS 320-324 ante.

12 Food Labelling Regulations 1996, SI 1996/1499, reg 27(3). For the meaning of 'ionising radiation' see PARA 392 note 6 ante.

- 13 For the meaning of 'ingredient' see PARA 375 note 5 ante.
- 14 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).
- 15 Ie subject to ibid reg 36(3), (4): see PARA 403 post.
- 16 Ibid reg 27(4).

UPDATE

394 Catering food sold at catering establishments

NOTE 7--SI 1996/1499 reg 27(1) also refers to the particulars specified in reg 34B (foods containing allergenic ingredients or ingredients originating from allergenic ingredients), and reg 34C (confectionery and drinks containing glycyrrhizinic acid or its ammonium salt): see PARAS 401B, 401C: reg 27(1) (amended by SI 2004/2824 (England), SI 2005/899 (England) (not yet in force), SI 2004/3022 (Wales), SI 2005/1309 (Wales) (not yet in force)).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(v) Omission of Certain Particulars/395. Seasonal selection packs.

395. Seasonal selection packs.

The outer packaging of a seasonal selection pack¹ does not need to be marked or labelled² with any of the particulars specified by the Food Labelling Regulations 1996³, provided that each item contained in the pack is individually prepacked⁴ and is marked or labelled in accordance with the provisions of the Food Labelling Regulations 1996 or any other regulations applying to such item⁵.

1 'Seasonal selection pack' means a pack consisting of two or more different items of food which are wholly or partly enclosed in outer packaging decorated with seasonal designs: Food Labelling Regulations 1996, SI 1996/1499, reg 2(1). For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

4 For the meaning of 'prepacked' see PARA 380 note 7 ante.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 28.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/396. Food sold from vending machines.

(vi) Additional Labelling Requirements for Certain Categories of Food

396. Food sold from vending machines.

Where any food¹ is sold from a vending machine, without prejudice to any other labelling² requirements imposed by the Food Labelling Regulations 1996³, there must appear on the front of the machine a notice indicating the name of the food (unless that name appears on the labelling of the food in such a manner as to be easily visible and clearly legible to an intending purchaser through the outside of the machine), together with⁴:

- 338 (1) in the event that such food is not prepacked⁵, and there is made in respect of it (whether on the machine or elsewhere) a restricted claim⁶, a notice giving the prescribed nutrition labelling⁷;
- 339 (2) in the event that such food is one which should properly be reheated before it is eaten, but suitable instructions for such reheating are not given on the packaging (if any) of the food, a notice giving such instructions⁸.

A notice required under head (1) or head (2) above must appear either on the front of the vending machine, or in close proximity to the machine and in such a way as to be readily discernible by an intending purchaser⁹.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

4 Ibid 29(1).

5 For the meaning of 'prepacked' see PARA 380 note 7 ante.

6 Ie a claim of a type as described in the Food Labelling Regulations 1996, SI 1996/1499, regs 40, 41, Sch 6 Pt II (as amended): see PARA 407 post.

7 Ibid reg 29(1)(a). Notices giving the prescribed nutrition labelling are described in reg 41(3), (4), Sch 7 Pt II (as amended) (see PARA 408 post): reg 29(1)(a). 'Prescribed nutrition labelling' means nutrition labelling given in accordance with Sch 7 (see PARA 408 post): reg 2(1).

8 Ibid reg 29(1)(b).

9 Ibid reg 29(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/397. Prepacked alcoholic drinks.

397. Prepacked alcoholic drinks.

In the case of prepacked¹ alcoholic drinks other than European Community controlled wine², every drink with an alcoholic strength by volume of more than 1.2 per cent must be marked or labelled³ with an indication of its alcoholic strength by volume in the form of a figure to not more than one decimal place (which may be preceded by the word 'alcohol' or by the abbreviation 'alc') followed by the symbol '% vol'⁴. Positive and negative tolerances⁵ are permitted in respect of the indication of alcoholic strength by volume⁶. For these purposes⁷, the alcoholic strength of any drink must be determined at 20° Celsius⁸.

1 For the meaning of 'prepacked' see PARA 380 note 7 ante.

2 For the meaning of 'wine' see PARA 374 note 13 ante.

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 30(1).

5 Ie positive and negative tolerances as specified by ibid reg 30, Sch 5.

6 Ibid reg 30(2).

7 Ie for the purposes of ibid reg 30.

8 Ibid reg 30(3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/398. Raw milk.

398. Raw milk.

The container in which any raw milk¹ is sold² must be marked or labelled³ with the words 'This milk has not been heat-treated and may therefore contain organisms harmful to health'⁴.

However, in the case of any raw milk which is not prepacked⁵ and is sold at a catering establishment⁶ there must appear: (1) on a label attached to the container in which that milk is sold; or (2) on a ticket or notice that is readily discernible by an intending purchaser at the place where he chooses that milk, the words 'Milk supplied in this establishment has not been heat-treated and may therefore contain organisms harmful to health'⁷.

These requirements⁸ do not apply to raw milk from buffaloes⁹.

1 For the meaning of 'raw milk' see PARA 390 note 3 ante.

2 For the meaning of 'sold' see PARA 376 note 4 ante.

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 31(1).

5 For the meaning of 'prepacked' see PARA 380 note 7 ante.

6 For the meaning of 'catering establishment' see PARA 373 note 3 ante.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 31(2).

8 Ie the provisions contained in ibid reg 31(1), (2): see the text and notes 1-7 supra.

9 Ibid reg 31(3).

UPDATE

398 Raw milk

TEXT AND NOTES 4, 7--In relation to Wales, the prescribed words are now followed by 'The Food Standards Agency strongly advises that it should not be consumed by children, pregnant women, older people or those who are unwell or have chronic illness': SI 1996/1499 reg 31(1), (2) (amended by SI 2006/31).

TEXT AND NOTES 8, 9--SI 1996/1499 reg 31(3) revoked, in relation to Wales, by SI 2006/31.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/399. Products consisting of skimmed milk together with non-milk fat.

399. Products consisting of skimmed milk together with non-milk fat.

The container in which any product:

- 340 (1) consisting of skimmed milk¹ together with non-milk fat²;
- 341 (2) which is capable of being used as a substitute for milk³; and
- 342 (3) which is neither an infant formula⁴ or a follow-on formula⁵, nor a product specially formulated for infants⁶ or young children for medical purposes⁷,

is sold must be prominently marked or labelled⁸ with a warning that the product is unfit, or not to be used, as food⁹ for babies¹⁰.

1 For the meaning of 'milk' see PARA 374 note 9 ante.

2 Food Labelling Regulations 1996, SI 1996/1499, reg 32(a).

3 Ibid reg 32(b).

4 'Infant formula' means a food intended for particular nutritional use by infants in good health during the first four to six months of life, and satisfying by itself the nutritional requirements of such infants: Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2); definition applied by the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

5 'Follow-on formula' means a food intended for particular nutritional use by infants in good health who are aged over four months, and constituting the principal liquid element in a progressively diversified diet: Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2); definition applied by the Food Labelling Regulations 1996, SI 1996/1499, reg 2(1).

6 'Infants' means children under the age of 12 months: ibid reg 2(1). For the meaning of 'month' see PARA 237 note 14 ante.

7 Ibid reg 32(c).

8 For the meaning of 'labelling' see PARA 375 note 3 ante.

9 For the meaning of 'food' see PARA 201 ante.

10 Food Labelling Regulations 1996, SI 1996/1499, reg 32.

UPDATE

399 Products consisting of skimmed milk together with non-milk fat

NOTES 4, 5--SI 1995/77 replaced: Infant Formula and Follow-on Formula (England) Regulations 2007, SI 2007/3521 (amended by SI 2008/2445), and Infant Formula and Follow-on Formula (Wales) Regulations 2007, SI 2007/3573 (amended by SI 2008/2602).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/400. Foods packaged in certain gases.

400. Foods packaged in certain gases.

A food¹, the durability of which has been extended by means of its being packaged in any packaging gas authorised pursuant to the Food Additives Directive² for use in foodstuffs intended for human consumption³, must be marked or labelled⁴ with the indication 'Packaged in a protective atmosphere'⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 I.e. EC Council Directive 89/107 (OJ L40, 11.2.89, p 27) (as amended) on the approximation of the laws of the member states concerning food additives authorised for use in foodstuffs intended for human consumption. For the meaning of 'additive' see PARA 379 note 2 ante.

3 For the meaning of 'human consumption' see PARA 201 note 3 ante.

4 For the meaning of 'labelling' see PARA 375 note 3 ante.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 33.

UPDATE

399 Products consisting of skimmed milk together with non-milk fat

NOTE 2-- From 20 January 2010, EC Council Directive 89/107 is replaced by European Parliament and EC Council Regulation 1333/2008 on food additives (OJ L 354, 31.12.2008, p 16); references to the repealed directive should be construed as references to Regulation 1333/2008: art 33. For details phased implementation see art 33.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/401. Foods containing sweeteners, added sugar and sweeteners, aspartame or polyols.

401. Foods containing sweeteners, added sugar and sweeteners, aspartame or polyols.

A food¹ containing a sweetener or sweeteners authorised pursuant to the Sweeteners in Food Regulations 1995² must be marked or labelled³ with the indication 'With sweetener(s)'⁴. This must accompany the name of the food⁵.

A food containing both an added sugar⁶ or sugars and a sweetener or sweeteners authorised pursuant to the Sweeteners in Food Regulations 1995 must be marked or labelled with the indication 'With sugar(s) and sweetener(s)'⁷. This must accompany the name of the food⁸.

A food containing aspartame must be marked or labelled with the indication 'Contains a source of phenylalanine'⁹.

A food containing more than 10 per cent added polyols must be marked or labelled with the indication 'Excessive consumption may produce laxative effects'¹⁰.

1 For the meaning of 'food' see PARA 201 ante.

2 Ie the Sweeteners in Food Regulations 1995, SI 1995/3123 (as amended): see PARA 367 ante.

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 34(1).

5 Ibid reg 34(5).

6 For the meaning of 'sugars' see PARA 383 note 14 ante.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 34(2).

8 Ibid reg 34(5).

9 Ibid reg 34(3).

10 Ibid reg 34(4).

UPDATE

401 Foods containing sweeteners, added sugar and sweeteners, aspartame or polyols

NOTE 4--SI 1996/1499 reg 34(1) amended: SI 2002/379 (England), SI 2002/330 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/401A. Drinks with high caffeine content.

401A. Drinks with high caffeine content.

In the case of a drink which is intended for consumption without modification and contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre, or is in concentrated or dried form and after reconstitution contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre, that drink must be marked or labelled with the words 'High caffeine content' in the same field of vision as the name of the drink, and those words must be followed by a reference in brackets to the caffeine content expressed in milligrams per 100 millilitres¹. This requirement does not apply to any drink based on coffee, tea or coffee extract where the name of the food includes the term 'coffee' or 'tea'².

¹ Food Labelling Regulations 1996, SI 1996/1499 reg 34A(1) (reg 34A added in relation to England by SI 2003/2647, and, in relation to Wales, by SI 2004/249).

² SI 1996/1499 reg 34A(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/401B. Foods containing allergenic ingredients or ingredients originating from allergenic ingredients.

401B. Foods containing allergenic ingredients or ingredients originating from allergenic ingredients.

Where any food containing any allergenic ingredient¹, or any ingredient originating from an allergenic ingredient², does not specify the allergenic ingredient in the name of the food, that food must be marked or labelled with a clear reference to the name of the allergenic ingredient concerned³.

In the case of any drink which has an alcoholic strength by volume of more than 1.2 per cent, the presence of any allergenic ingredient must be indicated by marking or labelling the drink with the word 'contains' followed by the name of the allergenic ingredient⁴, and the presence of any ingredient originating from an allergenic ingredient⁵ must be indicated by marking or labelling the drink with the word 'contains' followed by the name of the ingredient including a reference to the allergenic ingredient from which it originates⁶, unless the name of the allergenic ingredient is specified in the name of the drink or in the list of ingredients, if any⁷.

1 'Allergenic ingredient' means an ingredient referred to in the Food Labelling Regulations 1996, SI 1996/1499, Sch AA1 (added by SI 2004/2824 (England), SI 2004/3022 (Wales); and substituted by SI 2008/1188 (England); SI 2008/1268 (Wales)).

2 Ie an allergenic ingredient referred to in SI 1996/1499 Sch AA1 (Sch AA1 as added: see NOTE 1).

3 Ibid reg 34B(1) (reg 34B added by SI 2004/2824 (England), SI 2004/3022 (Wales); and amended by SI 2008/1188 (England), SI 2008/1268 (Wales)).

4 SI 1996/1499 reg 34B(2)(a).

5 Ie an allergenic ingredient referred to in ibid Sch AA1.

6 Ibid reg 34B(2)(b).

7 Ibid reg 34B(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vi) Additional Labelling Requirements for Certain Categories of Food/401C. Confectionery and drinks containing glycyrrhizinic acid or its ammonium salt.

401C. Confectionery and drinks containing glycyrrhizinic acid or its ammonium salt.

These provisions apply to any confectionery or drink which contains glycyrrhizinic acid or its ammonium salt, as a result of the addition of that acid or salt as such or of the liquorice plant *Glycyrrhiza glabra*¹. In the case of (1) any confectionery which contains a relevant concentration² of at least 100 mg/kg but less than 4 g/kg; (2) any drink which contains more than 1.2 per cent by volume of alcohol and a relevant concentration of at least 10 mg/l but less than 300 mg/l; and (3) any drink which does not contain more than 1.2 per cent by volume of alcohol and which contains a relevant concentration of at least 10 mg/l but less than 50 mg/l, that food must be marked or labelled with the indication 'contains liquorice', unless the term 'liquorice' appears in the list of ingredients or in the name of the food³. In the case of (a) any confectionery which contains a relevant concentration of at least 4g/kg, (b) any drink which contains more than 1.2 per cent by volume of alcohol and a relevant concentration of at least 300 mg/l, and (c) any drink which does not contain more than 1.2 per cent by volume of alcohol and which contains a relevant concentration of at least 50 mg/l, that food must be marked or labelled with the indication 'contains liquorice - people suffering from hypertension should avoid excessive consumption'⁴. These indications must appear immediately after the list of ingredients or, in the absence of such a list, near the name of the food⁴.

1 Food Labelling Regulations 1996, SI 1996/1499, reg 34C(1) (reg 34C added by SI 2005/899 (England), SI 2005/1309 (Wales)).

2 References to 'relevant concentration' are to the concentration of glycyrrhizinic acid or its ammonium salt in the food (1) manufactured as ready for consumption or, (2) if it is not so manufactured, as reconstituted according to its manufacturer's instructions: SI 1996/1499 reg 34C(1).

3 Ibid reg 34C(2).

4 Ibid reg 34C(3).

5 Ibid reg 34C(4).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vii) Manner of Marking or Labelling/402.
General requirement as to marking or labelling.

(vii) Manner of Marking or Labelling

402. General requirement as to marking or labelling.

When any food¹ is sold², the particulars with which it is required to be marked or labelled³ by the Food Labelling Regulations 1996⁴ must appear⁵:

- 343 (1) on the packaging⁶;
- 344 (2) on a label attached to the packaging⁷; or
- 345 (3) on a label that is clearly visible through the packaging⁸.

However, where the sale⁹ is otherwise than to the ultimate consumer¹⁰ such particulars may, alternatively, appear only on the commercial documents relating to the food where it can be guaranteed that such documents, containing all such particulars, either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food, and provided always that the name of the food¹¹, the appropriate durability indication¹², and the name or business name and an address or registered office of either or both of the manufacturer or packer or a seller established within the European Community¹³ is marked or labelled on the outermost packaging in which that food is then being sold¹⁴.

1 For the meaning of 'food' see PARA 201 ante.

2 Ie other than food to which the Food Labelling Regulations 1996, SI 1996/1499, reg 23 (food which is not prepacked and similar food, and fancy confectionery products) (see PARA 390 ante), reg 27 (certain food sold at catering establishments) (see PARA 394 ante) and reg 31 (raw milk) (see PARA 398 ante) applies.

3 For the meaning of 'labelling' see PARA 375 note 3 ante.

4 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended). In relation to Wales, EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended) concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of particulars, other than those provided for in EC Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, may also require particulars to be marked or labelled on food: see the Food Labelling Regulations 1996, SI 1996/1499, reg 35 (amended by SI 1999/747). This provision has been revoked in relation to England and replaced by similar provisions which also extend to genetically modified additives: see the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, regs 4, 11(5).

5 Food Labelling Regulations 1996, SI 1996/1499, reg 35 (as amended: see note 4 supra).

6 Ibid reg 35(a).

7 Ibid reg 35(b).

8 Ibid reg 35(c).

9 For the meaning of 'sale' see PARA 376 note 4 ante.

10 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante.

11 Ie the particular required by the Food Labelling Regulations 1996, SI 1996/1499, reg 5(a): see PARA 375 ante.

12 le the particular required by *ibid* reg 5(c): see PARA 375 ante. As to durability indications see PARA 385-387 ante.

13 le the particular required by *ibid* reg 5(e): see PARA 375 ante.

14 *Ibid* reg 35.

UPDATE

402 General requirement as to marking or labelling

TEXT AND NOTES--SI 1996/1499 reg 35 now reg 35(1) (amended, in relation to England, by SI 2000/2254, and, in relation to Wales, by SI 2001/1232).

NOTE 4--SI 2000/768 revoked: SI 2004/2335.

TEXT AND NOTE 11--See SI 1996/1499 reg 35(2), TEXT and NOTE 14.

TEXT AND NOTE 14--In the case of food to which *ibid* reg 35(1) applies which has been irradiated, other than food which is prepared for patients requiring sterile diets under medical supervision, the alternative provided for in the full-out words to that provision does not apply as regards the particulars specified in regs 14(2) (see PARA 378), 26(4A) (see PARA 393 TEXT AND NOTE 17), Sch 2 para 2 (see PARA 376), and the word 'irradiated' or the words 'treated with ionising radiation' must in all cases appear on the commercial documents relating to such food: reg 35(2) (added, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vii) Manner of Marking or Labelling/403. Non-prepacked food, food which is prepacked for direct sale, flour and fancy confectionery, and certain food sold at catering establishments.

403. Non-prepacked food, food which is prepacked for direct sale, flour and fancy confectionery, and certain food sold at catering establishments.

When any food¹ to which the provisions relating to food which is not prepacked, is prepacked for direct sale², flour confectionery products and fancy confectionery products³, and certain food sold⁴ at catering establishments⁵ apply, is sold to the ultimate consumer⁶, the particulars with which it is required to be marked or labelled⁷ by the Food Labelling Regulations 1996⁸ must⁹ appear: (1) on a label attached to the food; or (2) on a menu, notice, ticket or label that is readily discernible by an intending purchaser at the place where he chooses that food¹⁰.

However, in any case where food to which head (2) above applies has been or contains an ingredient¹¹ which has been irradiated¹² and that food is sold and delivered to the ultimate consumer in a catering establishment, use of alternative labelling relating to irradiation must not alone be treated as a contravention of the Food Labelling Regulations 1996¹³. For this purpose, alternative labelling is used where, instead of the particulars referred to in head (2) above appearing in the manner specified therein, alternative particulars are displayed¹⁴.

Alternative particulars are displayed in relation to any ingredient which has been irradiated if there appears, in the manner specified in head (2) above, an indication that the food of which that irradiated ingredient forms part may contain that irradiated ingredient and if the reference within that indication to that ingredient includes or is accompanied by the word 'irradiated' or the words 'treated with ionising radiation'¹⁵.

Alternative particulars are displayed if the irradiated ingredients to which they relate are dried substances¹⁶ normally used for seasoning, if there appears, in the manner specified in head (2) above, an indication to the effect that food sold in the catering establishment contains (or may contain) those irradiated ingredients and if the reference within that indication to those ingredients includes or is accompanied by the word 'irradiated' or the words 'treated with ionising radiation'¹⁷.

When any food to which the provisions relating to food which is prepacked and fancy confectionery products¹⁸ apply is sold otherwise than to the ultimate consumer, the particulars with which it is required to be marked or labelled by the Food Labelling Regulations 1996 must appear¹⁹:

- 346 (a) on a label attached to the food²⁰; or
- 347 (b) on a ticket or notice that is readily discernible by the intending purchaser at the place where he chooses the food²¹; or
- 348 (c) in commercial documents relating to the food where it can be guaranteed that such documents either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food²².

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'prepacked' see PARA 380 note 7 ante.

3 I.e. the Food Labelling Regulations 1996, SI 1996/1499, reg 23: see PARA 390 ante. For the meaning of 'confectionery product' see PARA 390 note 8 ante.

4 For the meaning of 'sold' see PARA 376 note 4 ante.

5 le the Food Labelling Regulations 1996, SI 1996/1499, reg 27: see PARA 394 ante. For the meaning of 'catering establishments' see PARA 373 note 3 ante.

6 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante.

7 For the meaning of 'labelling' see PARA 375 note 3 ante.

8 le the Food Labelling Regulations 1996, SI 1996/1499 (as amended). In relation to Wales, EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended) concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of particulars, other than those provided for in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, may also require particulars to be marked or labelled on such food: see the Food Labelling Regulations 1996, SI 1996/1499, reg 36(1) (amended by SI 1999/747). This provision has been revoked in relation to England: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 11(6)(a).

9 le except in a case to which the Food Labelling Regulations 1996, SI 1996/1499, reg 36(2) (as amended) applies: see the text to note 14 supra. In relation to Wales this is also except in a case to which reg 36(4A) (as added) applies: see the Food Labelling Regulations 1996, SI 1996/1499, reg 36(1) (amended by SI 1999/747; and SI 2000/768).

10 Food Labelling Regulations 1996, SI 1996/1499, reg 36(1) (as amended: see note 9 supra).

11 For the meaning of 'ingredient' see PARA 375 note 5 ante.

12 For the meaning of 'irradiated' see PARA 390 note 8 ante. As to irradiated food see PARAS 320-324 ante.

13 Food Labelling Regulations 1996, SI 1996/1499, reg 36(2) (amended by SI 1999/747). In relation to Wales, in any case where food: (1) is food to which the labelling requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) apply; (2) is not prepacked, or is prepacked for direct sale; and (3) is sold to the ultimate consumer at appropriate premises, use of alternative labelling in place of the GMO particulars must not alone be treated as a contravention of those labelling requirements and for this purpose alternative labelling is used where, instead of the particulars referred to in art 2(3) appearing in the manner specified in heads (1) and (2) in the text, alternative particulars are displayed in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 36(4B) (as added): Food Labelling Regulations 1996, SI 1996/1499, reg 36(4A) (added by SI 1999/747). This provision has been revoked in relation to England and replaced by similar provisions which also extend to genetically modified additives: see the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, regs 5, 11(6)(b). For the meaning of 'GMO particulars' see PARA 393 note 10 ante.

Alternative particulars are displayed in relation to any food referred to in the Food Labelling Regulations 1996, SI 1996/1499, reg 36(4A) (as added) if there appears on a menu, notice, ticket or label which is readily discernible by an intending purchaser and which is located at the place at the premises where he chooses that food, indications to the effect that some of the food sold at those premises contains ingredients produced from genetically modified soya beans or maize, or both, as the case may be, and that further information is available from the staff: reg 36(4B) (added by SI 1999/747). This provision has been revoked in relation to England and replaced by similar provisions which also extend to genetically modified additives: see the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, regs 5, 11(6)(b).

In head (3) supra 'appropriate premises' means premises where: (a) the staff provide clarification at the request of an intending purchaser as to whether particular food sold at those premises, other than food falling within EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) arts 1(2) or 2(2), is produced in whole or in part from a genetically modified product referred to in art 1(1); and (b) there is an established procedure at those premises for keeping staff informed of that information: Food Labelling Regulations 1996, SI 1996/1499, reg 36(4C) (added by SI 1999/747). This provision has been revoked in relation to England and replaced by similar provisions which also extend to genetically modified additives: see the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, regs 5, 11(6)(b).

14 Food Labelling Regulations 1996, SI 1996/1499, reg 36(2). Alternative particulars must be displayed in accordance with reg 36(3), reg 36(4), or reg 36(3) and (4) (see the text and notes 15, 17 infra): reg 36(2).

15 Ibid reg 36(3).

16 For the meaning of 'substance' see PARA 201 note 4 ante.

17 Food Labelling Regulations 1996, SI 1996/1499, reg 36(4).

18 le ibid reg 23 (as amended): see PARA 390 ante.

- 19 Ibid reg 36(5).
- 20 Ibid reg 36(5)(a).
- 21 Ibid reg 36(5)(b).
- 22 Ibid reg 36(5)(c).

UPDATE

403 Non-prepacked food, food which is prepacked for direct sale, flour and fancy confectionery, and certain food sold at catering establishments

NOTES 8, 9, 13--SI 2000/768 revoked: SI 2004/2335.

TEXT AND NOTES 13-17--SI 1996/1499 reg 36(2)-(4) applies only to food which is prepared for patients requiring sterile diets under medical supervision: reg 36(1A) (added, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232).

TEXT AND NOTE 22--Notwithstanding SI 1996/1499 reg 36(1)-(5) (but subject to reg 36(7)), in the case of the sale of any food to which reg 23 (see PARA 390) or reg 27 (see PARA 394) applies which has been irradiated (1) the word 'irradiated' or the words 'treated with ionising radiation' must in all cases appear on the commercial documents relating to such food; and (2) reg 36(5)(c) does not apply as regards the particulars specified in regs 14(2) (see PARA 378), 25(1) (see PARA 392), 27(3), (4) (see PARA 394), Sch 2 para 2 (see PARA 376): reg 36(6) (added, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232). SI 1996/1499 reg 36(6) does not apply in relation to food which is prepared for patients requiring sterile diets under medical supervision: reg 36(7) (added, in relation to England, by SI 2000/2254, and in relation to Wales, by SI 2001/1232).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vii) Manner of Marking or Labelling/404. Milk.

404. Milk.

In the case of milk¹ that is contained in a bottle, any particulars which are required to be given under the Food Labelling Regulations 1996² may be given on the bottle cap³. However, in the case of raw milk⁴ contained in a bottle, the container must be marked or labelled with the words 'This milk has not been heat-treated and may therefore contain organisms harmful to health'⁵ elsewhere than on the bottle cap⁶.

1 For the meaning of 'milk' see PARA 374 note 9 ante.

2 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

3 Ibid reg 37(1).

4 For the meaning of 'raw milk' see PARA 390 note 3 ante.

5 Ie the particulars specified in the Food Labelling Regulations 1996, SI 1996/1499, reg 31(1): see PARA 398 ante.

6 See ibid reg 37(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vii) Manner of Marking or Labelling/405. Intelligibility.

405. Intelligibility.

The particulars with which a food¹ is required to be marked or labelled² by the Food Labelling Regulations 1996³, or which appear on a menu, notice, ticket or label pursuant to those regulations, must be easy to understand, clearly legible and indelible and, when a food is sold to the ultimate consumer⁴, must be marked in a conspicuous place in such a way as to be easily visible⁵. This does not preclude the giving of such particulars at a catering establishment⁶, in respect of foods the variety and type of which are changed regularly, by means of temporary media (including the use of chalk on a blackboard)⁷.

Particulars must not in any way be hidden, obscured or interrupted by any other written or pictorial matter⁸.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 I.e. the Food Labelling Regulations 1996, SI 1996/1499 (as amended). The intelligibility of labelling of genetically modified food in relation to England is governed by the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 6 (see PARA 356 ante) and, in relation to Wales, by the Food Labelling Regulations 1996, SI 1996/1499, reg 38(1) (amended by SI 1999/747).

4 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 38(1) (amended by SI 1999/747; and by SI 2000/768). The requirement that the particulars must be easy to understand does not require them to be in any particular language; the question is the ease with which information supplied can be understood and information could in some cases in fact not be given in a written language at all but by means of design, symbols or pictograms: Case C-385/96 *Criminal Proceedings against Goerres* [1998] ECR I-4431, ECJ (a case on EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) art 14, which is the provision from which the Food Labelling Regulations 1996, SI 1996/1499, reg 3(1) (see PARA 373 ante) derives).

6 For the meaning of 'catering establishment' see PARA 373 note 3 ante.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 38(3).

8 Ibid reg 38(2).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(vii) Manner of Marking or Labelling/406. Field of vision.

406. Field of vision.

Where a food¹ is required to be marked or labelled² with more than one of the following indications, such indications must appear in the labelling of the food in the same field of vision³:

- 349 (1) the name of the food⁴;
- 350 (2) an appropriate durability indication⁵;
- 351 (3) an indication of alcoholic strength by volume⁶;
- 352 (4) the cautionary words in respect of raw milk⁷;
- 353 (5) the warning required on certain products that the product is unfit, or not to be used, as food for babies⁸; and
- 354 (6) an indication of the net quantity as required by the Weights and Measures Act 1985 or by any order or regulations made under it⁹.

Heads (2), (3) and (6) above do not apply to any food sold in a bottle or packaging where such bottle or packaging is the subject of the provisions relating to small packages and indelibly marked bottles¹⁰.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Food Labelling Regulations 1996, SI 1996/1499, reg 39(1).

4 Ibid reg 39(1)(a).

5 Ibid reg 39(1)(b). As to the appropriate durability indication see PARAS 384-387 ante.

6 Ibid reg 39(1)(c). As to the indication of alcoholic strength by volume see PARA 397 ante.

7 Ibid reg 39(1)(d). As to the cautionary words in respect of raw milk see PARA 398 ante. For the meaning of 'milk' see PARA 374 note 9 ante. For the meaning of 'raw milk' see PARA 390 note 3 ante.

8 Ibid reg 39(1)(e). As to the warning required on certain products see reg 32; and PARA 399 ante.

9 Ibid reg 39(1)(f). As to the requirements of the Weights and Measures Act 1985 see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 39 et seq.

10 Ibid reg 39(2). As to the provisions relating to small packages and indelibly marked bottles see reg 26 (as substituted and amended); and PARA 393 ante.

UPDATE

406 Field of vision

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(viii) Claims, Nutrition Labelling and Misleading Descriptions/407. Claims.

(viii) Claims, Nutrition Labelling and Misleading Descriptions

407. Claims.

A prohibited claim¹ may not be made, either expressly or by implication, in the labelling² or advertising³ of a food⁴. The prohibited claims are: (1) a claim that a food has tonic properties⁵; and (2) a claim that a food has the property of preventing, treating or curing a human disease or any reference to such a property⁶.

A restricted claim⁷ may not be made, either expressly or by implication, in the labelling or advertising of a food, except in accordance with the appropriate conditions⁸. The claims which may be made only subject to conditions are: (a) claims relating to food for particular nutritional uses⁹; (b) reduced or low energy value claims¹⁰; (c) protein claims¹¹; (d) vitamin claims¹²; (e) mineral claims¹³; (f) cholesterol claims¹⁴; (g) other nutrition claims¹⁵; and (h) claims which depend on another food¹⁶. Where a claim is a claim of two or more of the types of restricted claims, the conditions appropriate to each of the relevant types of claim must be observed¹⁷.

Nothing in the above provisions relating to claims¹⁸ may be taken to prevent the dissemination of useful information or recommendations intended exclusively for persons having qualifications in dentistry, medicine, nutrition, dietetics or pharmacy¹⁹.

A reference to a substance²⁰ in a list of ingredients²¹ or in any nutrition labelling²² does not of itself constitute a prohibited or restricted claim²³.

Any condition²⁴ that a food in respect of which a claim is made must be marked or labelled with the prescribed nutrition labelling²⁵ does not apply in the case of²⁶:

- 355 (i) a food (other than a food sold from a vending machine²⁷) which is not prepacked¹¹ and which is sold²⁹ to the ultimate consumer³⁰ at a catering establishment³¹; or
- 356 (ii) a claim contained within generic advertising³²,

but in respect of a food described in head (i) above there may be given such of the elements of the prescribed nutrition labelling which, but for this provision, would have been required or permitted to be given, as it is wished to include³³.

1 I.e. a prohibited claim as described in the Food Labelling Regulations 1996, SI 1996, regs 40, 41, Sch 6 Pt I: see the text and notes 2-33 infra.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 For the meaning of 'advertise' see PARA 225 note 5 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 40(1). For the meaning of 'food' see PARA 201 ante. A claim in relation to oats that they can help to reduce excess cholesterol levels thereby cutting down the risk of heart disease is a claim that for some people heart disease will be prevented and thus contravenes this prohibition: *Cheshire County Council v Mornflake Oats Ltd* (1993) 157 JP 1011, DC. Devices, such as advertising a book together with a food and attempting to associate the medicinal claim with the book, are unlikely to succeed: *Cheshire County Council v Mornflake Oats Ltd* supra.

5 Ibid Sch 6 Pt I para 1. However, the use of the word 'tonic' in the description 'Indian tonic water' or 'quinine tonic water' does not constitute such a claim: see Sch 6 Pt I para 1.

6 Ibid Sch 6 Pt I para 2. However, a claim that a food is suitable, or has been specially made, for a particular nutritional purpose (see Sch 6 Pt II item 1) (see the text and note 7 *infra*) is not of itself to be regarded as a claim of this type: Sch 6 Pt I para 2. 'Particular nutritional purpose' means the fulfilment of the particular nutritional requirements of: (1) a person whose digestive processes are, or whose metabolism is, disturbed; (2) a person whose physiological condition renders him able to obtain a special benefit from the controlled consumption of any substance or food; or (3) infants or young children in good health: reg 2(1). 'Infants' means children under the age of 12 months and 'young children' means children aged between one and three years: reg 2(1).

7 Ie a restricted claim as described in *ibid* Sch 6 Pt II (as amended): see the text and notes 8-16 *infra*.

8 Ibid reg 40(2). The appropriate conditions are those in Sch 6 Pt II col 2: reg 40(2).

9 See *ibid* Sch 6 Pt II col 1 item 1.

10 See *ibid* Sch 6 Pt II col 1 item 2 (amended by SI 1998/1398).

11 See the Food Labelling Regulations 1996, SI 1996/1499, Sch 6 Pt II col 1 item 3.

12 See *ibid* Sch 6 Pt II col 1 item 4, Table A.

13 See *ibid* Sch 6 Pt II col 1 item 5, Table B.

14 See *ibid* Sch 6 Pt II col 1 item 6.

15 See *ibid* Sch 6 Pt II col 1 item 7. 'Nutrition claim' means any statement, suggestion or implication in any labelling, presentation or advertising of a food that that food has particular nutrition properties, but does not include a reference to any quality or quantity of any nutrient where such reference is required by law: reg 2(1). 'Nutrition properties' means either or both of: (1) the provision (including provision at a reduced or increased rate), or the lack of provision, of energy; and (2) the content (including content in a reduced or increased proportion) of the lack of content, of any nutrient (including any substance which belongs to, or is a component of, a nutrient): reg 2(1).

16 See *ibid* Sch 6 Pt II col 1 item 8.

17 Ibid reg 40(3).

18 Ie the Food Labelling Regulations 1996, SI 1996/1499, Sch 6 (as amended): see notes 1-17 *supra*.

19 Ibid reg 41(1).

20 For the meaning of 'substance' see PARA 201 note 4 *ante*.

21 For the meaning of 'ingredient' see PARA 375 note 5 *ante*.

22 For the meaning of 'nutrition labelling' see PARA 383 note 14 *ante*.

23 See the Food Labelling Regulations 1996, SI 1996/1499, reg 41(2).

24 Ie any condition specified in *ibid* Sch 6 (as amended): see the text and notes 5-16 *supra*.

25 For the meaning of 'prescribed nutrition labelling' see PARA 396 note 7 *ante*.

26 Food Labelling Regulations 1996, SI 1996/1499, reg 41(3).

27 As to vending machines see PARA 396 *ante*.

28 For the meaning of 'prepacked' see PARA 380 note 7 *ante*.

29 For the meaning of 'sold' see PARA 376 note 4 *ante*.

30 For the meaning of 'ultimate consumer' see PARA 373 para 3 *ante*.

31 Food Labelling Regulations 1996, SI 1996/1499, reg 41(3)(a). For the meaning of 'catering establishment' see PARA 373 note 3 *ante*.

32 Ibid reg 41(3)(b). 'Generic' is not defined for the purposes of the Food Labelling Regulations 1996, SI 1996/1499 (as amended). For the meaning of 'advertise' see PARA 225 note 5 ante.

33 Ibid reg 41(3). Where all or any such elements are given this must be in accordance with reg 41(3), Sch 7 Pt I (presentation of prescribed nutrition labelling), except that in applying Sch 7 Pt I para 4, in place of para 4(a)(i), (ii) to that paragraph there are to be read references to: (1) an unquantified serving of the food; and (2) any one portion of the food: reg 41(3).

UPDATE

407 Claims

TEXT AND NOTES--Note that European Parliament and EC Council Regulation 1924/2006 (OJ L404 30.12.2006; corrected in OJ L12 18.1.2007 p 3) on nutrition and health claims in food (applying from 1 July 2007), sets out specific restrictions and conditions applying to the use of nutrition and health claims made in commercial communications in the labelling, presentation or advertising of foods intended for individual consumers, restaurants, hospitals, schools, canteens and similar mass caterers. The EC Commission has until 19 January 2009 to establish (in cooperation with the member states) nutrient profiles with which food, or certain categories of food, must comply in order to bear nutrition or health claims, and the conditions for use of such claims. The general principle for all such claims is that they must be based on and substantiated by generally accepted scientific evidence. They must not be: false, ambiguous or misleading; give rise to doubt about the safety and/or the nutritional adequacy of other foods; encourage or condone excess consumption of a food; state suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general; refer to changes in bodily functions which could give rise to or exploit fear in the consumer. For rules on applications for authorisation of health claims under Regulation 1924/2006 art 15 see EC Commission Regulation 353/2008 (OJ L109, 19.4.1008, p 11).

UK provision for the execution and enforcement of Regulation 1924/2006 is made in the Nutrition and Health Claims (England) Regulations 2007, SI 2007/2080, and the Nutrition and Health Claims (Wales) Regulations 2007, SI 2007/2611.

SI 1996/1499 reg 41(5) added: SI 2007/2080 (England), SI 2007/2611 (Wales).

NOTES 12, 13--SI 1996/1499 Sch 6 Pt II Tables A, B substituted: SI 2009/2538 (England); SI 2009/2705 (amended by SI 2010/1069) (Wales).

NOTE 33--SI 1996/1499 Sch 7 Pt I amended, in relation to England, by SI 2009/2538, and in relation to Wales, by SI 2004/2558, SI 2009/2705.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(viii) Claims, Nutrition Labelling and Misleading Descriptions/408. Nutrition labelling.

408. Nutrition labelling.

Where a nutrition claim¹ is made, the conditions relating to claims require the food² to be marked or labelled with the required nutrition labelling³. Where nutrition labelling (not being prescribed nutrition labelling⁴) is given, it must be given in all respects as if it were prescribed nutrition labelling apart from certain exceptions⁵.

In respect of any food which is not prepacked⁶ and which is sold: (1) to the ultimate consumer⁷ other than at a catering establishment⁸; (2) to the ultimate consumer from a vending machine⁹, whether or not such machine is located at a catering establishment¹⁰; or (3) to a catering establishment¹¹, the prescribed nutrition labelling must include such of energy and the amounts of any nutrient¹² and the name and amount of any substance¹³ which belongs to, or is a component of, any nutrient, in respect of which a nutrition claim is made¹⁴.

In respect of any other food¹⁵, prescribed nutrition labelling must be given as follows:

- 357 (a) it must include either (i) energy and the amounts of protein, carbohydrate and fat, or (ii) energy and the amounts of protein, carbohydrate, sugars, fat, saturates, fibre and sodium, provided that, where sugars, saturates, fibre or sodium is, or are, the subject of a nutrition claim, it must be given in accordance with head (ii)¹⁶;
- 358 (b) where such is the subject of a nutrition claim, it must also include the amounts of any polyols, starch, mono-unsaturates, polyunsaturates, cholesterol, vitamins or minerals, and in the absence of such a claim it may include any of these, provided that in either case only those vitamins or minerals present in a significant amount¹⁷ must, or may, be so included¹⁸;
- 359 (c) where labelling is given in accordance with head (a)(i) above and, further to head (b) above the amount of any of mono-unsaturates, polyunsaturates or cholesterol has been included, it must also include the amount of saturates¹⁹; and
- 360 (d) where such is the subject of a nutrition claim, it must also include the name and amount of any substance which belongs to, or is a component of, one of the nutrients already required or permitted to be included²⁰.

Any prescribed nutrition labelling must be presented together in one conspicuous place in tabular form with any numbers aligned or, if there is insufficient space to permit tabular listing, in linear form²¹.

1 For the meaning of 'nutrition claim' see PARA 407 note 15 ante.

2 For the meaning of 'food' see PARA 201 ante.

3 Ie under the Food Labelling Regulations 1996, SI 1996/1499, reg 40, Sch 6 Pt II (as amended): see PARA 407 ante. For the meaning of 'nutrition labelling' see PARA 383 ante.

4 Ie under ibid Sch 6 Pt II (as amended): see PARA 407 ante.

5 Ibid reg 41(4). In applying in this context the requirements for prescribed nutrition labelling described in Sch 7, Sch 7 Pt II must be read as if Sch 7 Pt II para 1(a) proviso (see head (a) in the text) and Sch 7 Pt II para 1(d) (see head (d) in the text) were omitted: reg 41(4).

- 6 For the meaning of 'prepacked' see PARA 380 note 7 ante.
- 7 For the meaning of 'ultimate consumer' see PARA 373 para 3 ante.
- 8 Food Labelling Regulations 1996, SI 1996/1499, reg 41(4), Sch 7 Pt II para 2(1)(a). For the meaning of 'catering establishment' see PARA 373 note 3 ante.
- 9 As to vending machines see PARA 396 ante.
- 10 Food Labelling Regulations 1996, SI 1996/1499, Sch 7 Pt II para 2(1)(b).
- 11 Ibid Sch 7 Pt II para 2(1)(c).
- 12 For the meaning of 'nutrient' see PARA 383 note 14 ante.
- 13 For the meaning of 'substance' see PARA 201 note 4 ante.
- 14 Food Labelling Regulations 1996, SI 1996/1499, Sch 7 Pt II para 2(1). It may also include any of the items listed in Sch 7 Pt I para 1 in respect of which there is no such claim: see Sch 7 Pt II para 2(1).
- 15 Ie any food other than one to which ibid Sch 7 Pt II para 2 applies: see the text and notes 8-14 supra.
- 16 Ibid Sch 7 Pt II para 1(a).
- 17 Ie as described in ibid Sch 6 Tables A, B.
- 18 Ibid Sch 7 Pt II para 1(b).
- 19 Ibid Sch 7 Pt II para 1(c).
- 20 Ibid Sch 7 Pt II para 1(d).
- 21 Ibid Sch 7 Pt I para 6. Prescribed nutrition labelling must be presented in the specified manner: see Sch 7 Pt I paras 1-5.

UPDATE

408 Nutrition labelling

TEXT AND NOTES--For further regulations governing nutrition and health claims in relation to food see the Nutrition and Health Claims (England) Regulations 2007, SI 2007/2080, and the Nutrition and Health Claims (Wales) Regulations 2007, SI 2007/2611.

NOTE 16--For the meaning of 'fibre' see PARA 383 note 14.

NOTE 21--SI 1996/1499 Sch 7 Pt I para 5 amended, in relation to Wales, by SI 2004/2558, SI 2009/2705, and in relation to England, by SI 2004/1512, SI 2009/2538.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(viii) Claims, Nutrition Labelling and Misleading Descriptions/409. Misleading descriptions.

409. Misleading descriptions.

A wide range of words and descriptions may not be used in the labelling or advertising of food, except in accordance with conditions which have been imposed in order to prevent the consumer being misled¹. The controlled words and descriptions are: 'dietary' and 'dietetic', 'ice cream', 'dairy ice cream', the word 'milk' or any other word or description which implies that the food contains milk, 'starch-reduced', the word 'vitamin' or any other word or description which implies that the food is a vitamin, 'alcohol-free', 'dealcoholised', the description 'low-alcohol' or any other word or description which implies that the drink is low in alcohol, the description 'low calorie' or any other word or description which implies that the drink being described is low in calories, 'non-alcoholic', 'liqueur', 'Indian tonic water', 'quinine tonic water', 'tonic wine', 'non-alcoholic wine', the names of some cheeses, and the names of some kinds of cream².

In addition, any description incorporating the name of a food in such a way as to imply that the food or the part of the food being described has the flavour of a food named in the description may only be used if the flavour of the food is derived wholly or mainly from the food named in the description. This does not prevent the use of the word 'flavour' preceded by the name of a food when the flavour of the food being described is not wholly or mainly from the food named in the description. There is also an exception in relation to descriptions incorporating the word 'chocolate'³.

Similarly, a pictorial representation of a food which is such as to imply that the food to which the representation is applied has the flavour of the food depicted in the representation may be used only if the flavour of the food is wholly or mainly derived from the food depicted in the representation⁴.

1 Food Labelling Regulations 1996, SI 1996/1499, reg 42(1), Sch 8. For the meaning of 'labelling' see PARA 375 note 3 ante. For the meaning of 'food' see PARA 201 ante.

2 For the controlled words and descriptions and the conditions applying to them see *ibid* Sch 8. In relation to wine, cheese names and cream names see regs 43, 42(2)-(4) (reg 42(4) added by SI 1998/1398).

3 See the Food Labelling Regulations 1996, SI 1996/1499, Sch 8.

4 See *ibid* Sch 8.

UPDATE

409 Misleading descriptions

NOTES--SI 1996/1499 Sch 8 amended: SI 2002/379 (England), SI 2002/330 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ix) Offences and Legal Proceedings/410. Enforcement of the regulations.

(ix) Offences and Legal Proceedings

410. Enforcement of the regulations.

Each food authority¹ must enforce and execute the Food Labelling Regulations 1996² in its area³. However, each port health authority must enforce and execute the regulations in its district in relation to imported food⁴.

1 For these purposes, 'food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change, or in relation to the Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(d), (e) (see PARA 411 post); (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple) (see PARA 251 ante): Food Labelling Regulations 1996, SI 1996/1499, reg 45(3). As to food authorities see PARA 251 et seq ante.

2 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

3 Ibid reg 45(1).

4 Ibid reg 45(2). For the meaning of 'food' see PARA 201 ante.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ix) Offences and Legal Proceedings/411. Offences.

411. Offences.

If any person:

- 361 (1) sells any food¹ which is not marked or labelled² in accordance with the provisions of Part II of the Food Labelling Regulations 1996³ which concern food to be delivered as such to the ultimate consumer⁴ or to caterers⁵; or
- 362 (2) sells or advertises for sale⁶ any food in respect of which a claim is made, nutrition labelling⁷ is given or a description or a name is used in contravention of the provisions of Part III of the regulations⁸ relating to claims, nutrition labelling and misleading descriptions⁹; or
- 363 (3) sells any food from a vending machine¹⁰ in contravention of the provision relating to additional labelling requirements for food sold from vending machines¹¹; or
- 364 (4) sells any food after the date shown in a 'use by' date relating to it¹²; or
- 365 (5) being a person other than whichever of the manufacturer, the packer, or the seller established within the European Community, was originally responsible for so marking the food, removes or alters the appropriate durability indication¹³ relating to that food¹⁴,

he is guilty of an offence¹⁵.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'labelling' see PARA 375 note 3 ante.

3 Ie the Food Labelling Regulations 1996, SI 1996/1499, Pt II (regs 4-39) (as amended).

4 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante.

5 Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(a).

6 For the meaning of 'sale' see PARA 376 note 4 ante. For the meaning of 'advertise' see PARA 225 note 5 ante.

7 For the meaning of 'nutrition labelling' see PARA 383 note 14 ante.

8 Ie the Food Labelling Regulations 1996, SI 1996/1499, Pt III (regs 40-43) (as amended).

9 Ibid reg 44(1)(b). As to claims, nutrition labelling and misleading descriptions see PARAS 407-409 ante.

10 As to vending machines see PARA 396 ante.

11 Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(c). The provision referred to in the text is reg 29; see PARA 396 ante.

12 Ibid reg 44(1)(d). As to 'use by' dates see PARA 386 ante.

13 For the meaning of 'appropriate durability indication' see PARA 384 note 1 ante. As to the appropriate durability indication see PARAS 384-387 ante.

14 Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(e). In any proceedings for an offence under reg 44(1)(e) it is a defence for the person charged to prove that each removal or alteration in respect of which the

offence is alleged was effected under the written authorisation of a person capable of effecting that removal or alteration without contravention of that provision: reg 46.

15 Ibid reg 44(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 44(1). As to the standard scale see PARA 242 note 18 ante. In Wales, if any person sells any food to which the labelling requirements of EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) (as amended) on the Regulation Concerning the Compulsory Indication of the Labelling of Certain Foodstuffs Produced from Genetically Modified Organisms of Certain Particulars apply which is not marked or labelled with the GMO particulars, he is guilty of an offence: Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(f) (added by SI 1999/747). However, the Food Labelling Regulations 1996, SI 1996/1499, reg 44(1)(f) (as added) does not apply in the case of any food to which reg 36(4A) (as added) (see PARA 403 ante) applies and in respect of which alternative particulars are displayed in accordance with reg 36(4B) (as added: see PARA 403 ante): reg 44(1)(f) (as so added). For the meaning of 'GMO particulars' see PARA 393 note 10 ante. Regulations 44(1)(f) (as added) has been revoked in relation to England and replaced by similar provisions: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 11(8).

UPDATE

411 Offences

NOTE 15--SI 2000/768 revoked: SI 2004/2335.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(3) FOOD LABELLING/(ix) Offences and Legal Proceedings/412. Defence in relation to exports.

412. Defence in relation to exports.

In any proceedings for an offence under the Food Labelling Regulations 1996¹ it is a defence for the person charged to prove²:

- 366 (1) that the food³ in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to the Food Labelling Regulations 1996 and that it complies with that legislation⁴; and
- 367 (2) in the case of export to an EEA state⁵, that the legislation complies with the provisions of the European Directive on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer⁶ and, where applicable, the provisions of certain other Directives⁷.

1 le the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

2 Ibid reg 47.

3 For the meaning of 'food' see PARA 201 ante.

4 Food Labelling Regulations 1996, SI 1996/1499, reg 47(a).

5 For the meaning of 'EEA State' see PARA 373 note 10 ante.

6 le EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of member states relating to the labelling, presentation and advertising of foodstuffs.

7 Food Labelling Regulations 1996, SI 1996/1499, reg 47(b) (substituted by SI 1998/1398; and amended by SI 1999/747; SI 2000/768). The other European Directives which may also be applicable are EC Council Directive 87/250 (OJ L113, 30.4.87, p 57) on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer; EC Council Directive 89/398 (OJ L186, 30.6.89, p 27) (as amended) on the approximation of the laws of the member states relating to foodstuffs intended for particular nutritional uses; EC Council Directive 90/496 (OJ L276, 6.10.90, p 40) on nutrition labelling for foodstuffs; and EC Council Directive 94/54 (OJ L300, 23.11.94, p 14) (as amended) concerning the compulsory indication on the labelling of certain foodstuffs of particulars, other than those provided for in EC Council Directive 79/112 (OJ L33, 8.2.79, p 1) (as amended) on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer: see the Food Labelling Regulations 1996, SI 1996/1499, reg 47(b) (as so substituted and amended). In relation to Wales, EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) may also be applicable: Food Labelling Regulations 1996, SI 1996/1499, reg 47(b) (as so substituted and amended). EC Council Regulation 1139/98 (OJ L159, 3.6.98, p 4) has been revoked in relation to England: Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000, SI 2000/768, reg 11(9).

UPDATE

412 Defence in relation to exports

TEXT AND NOTES--SI 1996/1499 reg 47 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

NOTE 7-- Directive 89/398 replaced: European Parliament and EC Council Directive 2009/39 (OJ L124, 20.5.2009, p 21); references to the repealed directive should be construed as references to Directive 2009/39 and read in accordance with the correlation table in Annex III: art 16. Directive 94/54 repealed and replaced by EC

Commission Directive 2008/5 (OJ L27, 31.1.2008, p 12) concerning the compulsory indication on the labelling of certain foodstuffs of particulars other than those provided for in Directive 2000/13 (codified version); references to the repealed directive should be construed as references to Directive 2008/5 and read in accordance with the correlation table in Annex III: art 2.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(4) FOOD ADDITIVES LABELLING/413. Sale and labelling of food additives.

(4) FOOD ADDITIVES LABELLING

413. Sale and labelling of food additives.

No person may make a business sale of any food additives¹ to any person for use as ingredients in the preparation of food unless the food additives are in a container² and the requirements for business sales of food additives³ are observed in relation to that sale⁴. No person may make a consumer sale of food additives to any person unless the food additives are in a container and the requirements for consumer sales of food additives⁵ are observed in relation to that sale⁶.

These provisions do not apply to any food additive once it has become part of other food⁷.

If any person contravenes or fails to comply with any of these provisions he is guilty of an offence⁸.

Each food authority⁹ has a duty to enforce these provisions within its area¹⁰.

1 For these purposes, 'food' has the same meaning as in the Food Safety Act 1990 (see PARA 201 ante), except that it is limited to food intended for sale for human consumption: Food Additives Labelling Regulations 1992, SI 1992/1978, reg 2. 'Food additive' means such food as comprises material (with or without nutritive value) which: (1) is within a category (or more than one category) listed in reg 2, Sch 1 Pt I (amended by SI 1995/3124; and SI 1995/3187), as supplemented by the Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 1 Pt II (amended by SI 1995/3123; SI 1995/3124; and SI 1995/3187); (2) is neither normally consumed as a food in itself nor normally used as a characteristic ingredient of food; (3) is not within a category (or more than one category) listed in the Food Additives Labelling Regulations 1992, SI 1992/1978, reg 2, Sch 2; and (4) the intentional addition of which to other food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of that other food results, or may be reasonably expected to result, in that material or its by-products becoming directly or indirectly a component of that other food: reg 2.

The categories outside the scope of food additives are: (a) processing aids; (b) substances used in the protection of plants and plant products; (c) permitted flavourings within the meaning of the Flavourings in Food Regulations 1992, SI 1992/1971 (as amended) (see PARA 369 ante); (d) substances added to food as nutrients: see the Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 2.

2 For these purposes, 'container', in relation to food additives, has the same meaning as in the Food Safety Act 1990 (see PARA 264 note 6 ante), except that it also includes a vehicle in which those food additives, not being in any other container, are placed: Food Additives Labelling Regulations 1992, SI 1992/1978, reg 2.

3 The requirements for a business sale of food additives are observed in relation to that sale where: (1) the container in which those food additives are bears the information required by *ibid* reg 4(3), Sch 3 Pt II (as amended) (see heads (1)-(8) in the text); or (2) that container bears the information required by Sch 3, Pt II paras 1(a) (as amended), 2, 3, 4 (see heads (1)-(4) in the text and note 7 *infra*) and, in a conspicuous part of it, the words 'Intended for manufacture of foodstuffs and not for retail sale' and trade documents relating to the consignment which comprises or includes the food additives are supplied to the purchaser with or in advance of the consignment and contain the information required by the remainder of Sch 3 Pt II, and that information is or, as the case may be, that information and those words are conspicuous, clearly legible and indelible: Sch 3 Pt I para 1.

4 *Ibid* reg 4(1).

5 The requirements for a consumer sale of food additives are observed in relation to that sale where: (1) the name used for the product comprising the food additives (a) comprises a description of those food additives specified in regulations in force under the Food Safety Act 1990 and accompanied by an EC number also specified in those regulations in relation to each additive in that description; or (b) in any case where there is no such description, comprises a description sufficiently precise to enable it to be distinguished from any product with which it could be confused; (2) there are stated on the container the essential contents, that is to say (a)

the name (or, as the case may be, the name and EC number) used for the product; (b) the information, in relation to the food additives, required by the Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 3 Pt II paras 1-7 (as amended) (see heads (1)-(7) in the text); and (c) in so far as the Food Labelling Regulations 1996, SI 1996/1499, reg 20 (see PARA 385 ante) does not apply to the product, the indication of minimum durability of the product which would be required by that provision if the product had been a food to which that provision applied; and (3) those essential contents are so stated as to be conspicuous, clearly legible and indelible: Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 3 Pt I para 2 (amended by SI 1995/3187; and SI 1996/1499).

6 Food Additives Labelling Regulations 1992, SI 1992/1978, reg 4(2). The information that is required is:

- 24 (1) in relation to each food additive, the appropriate name information, that is to say (a) in the case of any food additive detailed by name and EC number in any regulations for the time being in force under the Food Safety Act 1990, that name and number; and (b) in the case of any other food additive, a description of that additive sufficiently precise to enable it to be distinguished from any food additive with which it could be confused, in descending order (where there is more than one such food additive) of the proportion by weight of the food additives in the container, and in relation to any food additive on or in which any supplementary material is present, an indication of each component of the supplementary material in descending order (where there is more than one such component) of the proportion by weight of those components (Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 3 Pt II para 1);
- 25 (2) the statements 'For use in food', 'Restricted use in food', or a statement referring more specifically to the use in food for which the food additives are intended (Sch 3 Pt II para 2);
- 26 (3) any special storage conditions for the food additives (Sch 3 Pt II para 3);
- 27 (4) any special conditions of use of the food additives (Sch 3 Pt II para 4);
- 28 (5) instructions for use of the food additives if it would be difficult to make appropriate use of the food additives in the absence of such instructions (Sch 3 Pt II para 5);
- 29 (6) a mark identifying the batch or lot in which each food additive was produced (Sch 3 Pt II para 6);
- 30 (7) the name (or business name) and address of one of the manufacturer of the food additives, the packer of the food additives, or a seller of the food additives established in the European Economic Community (Sch 3 Pt II para 7); and
- 31 (8) in relation to business sales only, the percentage of each component of the food additives the sale of any description of food containing which is, if that description of food contains more than a specified quantity or proportion of that component, prohibited by any provision of the Food Safety Act 1990 or of regulations under it, or such information as is necessary to enable the purchaser to ascertain whether, and if so to what extent, he could use such food additives in food sold by him without contravening any such provision (Food Additives Labelling Regulations 1992, SI 1992/1978, Sch 3 Pt II para 8).

1. 'Supplementary material' means, in relation to a food additive, material the presence of which in or on the food additive may reasonably be expected to facilitate storage, sale, standardisation, dilution or dissolution of the food additive: see reg 2. As to lot marking see PARAS 414-416 post.

1

7 Ibid reg 3(1). For these purposes, a food additive becomes part of other food when it is added to other food which comprises or contains material other than food additives, but the addition of supplementary material to a food additive does not of itself cause that food additive to become part of other food for those purposes: reg 3(2).

8 Ibid reg 5(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5(1). As to the standard scale see PARA 242 note 18 ante. It is a defence for the person charged to prove that the food additive in respect of which the offence is alleged to have been committed was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence: reg 6. It is also a defence to prove that the food additive concerned was put on the market or labelled before 4 November 2000 and the matter constituting the offence would not have constituted an offence under the Food Additives Labelling Regulations 1992, SI 1992/1978 (as amended) if the amendments made by the Miscellaneous Food Additives (Amendment) Regulations 1999, SI 1999/1136, reg 14(1), (2)(b) had not been made when the food additive was put on the market or labelled: Food Additives Labelling Regulations 1992, SI 1992/1978, reg 6A (added by SI 1999/1136).

The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 36 (offences by bodies corporate) (see PARA 460 post) apply: Food Additives Labelling Regulations 1992, SI 1992/1978, reg 7.

9 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England and Wales; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (see PARA 251 ante): Food Additives Labelling Regulations 1992, SI 1992/1978, reg 5(3).

10 Ibid reg 5(2).

UPDATE

413 Sale and labelling of food additives

TEXT AND NOTES--SI 1992/1978 revoked: SI 2009/3238 (England), SI 2009/3378 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(5) LOT MARKING/414. Lot marking requirement.

(5) LOT MARKING

414. Lot marking requirement.

Subject to certain exceptions¹, no person may sell² any food³ which forms part of a lot unless it is accompanied by a lot marking indication⁴. 'Lot' means a batch of sales units of food produced, manufactured or packaged under similar conditions⁵. The lot to which food in the sales unit belongs must be determined by a producer, manufacturer or packager, or the first seller established within the European Community⁶, of the food in question⁷. The lot marking indication must be determined and affixed under the responsibility of one or other of those operators, and must be preceded by the letter 'L', except in cases where that lot marking indication is clearly distinguishable from the other indications on the packaging of the food or on a label attached to its packaging⁸. A lot marking indication: (1) for prepacked⁹ food must appear on, or on a label attached to, the packaging of the food¹⁰; and (2) for food which is not prepacked must appear on the container of the food or on a commercial document which accompanies the food¹¹, and must in all cases appear in such a way as to be easily visible, clearly legible and indelible¹².

1 Ie subject to the exceptions specified in the Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 4: see PARA 415 post.

2 'Sell' includes offer or expose for sale and have in possession for sale; and 'sale' and 'sold' are to be construed accordingly: Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 2.

3 'Food' means food, within the meaning of the Food Safety Act 1990 (see PARA 201 ante), intended for sale for human consumption: Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 2. For the meaning of 'human consumption' see PARA 201 note 3 ante.

4 Ibid reg 3(1), which is expressed to be subject to the exceptions specified in reg 4 (see PARA 415 post). 'Lot marking indication' means an indication which allows identification of the lot to which a sales unit of food belongs: reg 2(1). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 6.

5 Ibid reg 2.

6 As to the first seller established within the Community see EC Council Directive 89/396 (OJ L186, 30.6.89, p 21) (as amended); and EC Council Directive 92/11 (OJ L65, 11.3.92, p 32)).

7 Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 3(2)(a).

8 Ibid reg 3(2)(b).

9 For the meaning of 'prepacked' see PARA 380 note 7 ante; definition applied by ibid reg 2.

10 Ibid reg 3(3)(a).

11 Ibid reg 3(3)(b).

12 Ibid reg 3(3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(5) LOT MARKING/415. Exemptions for particular types of sale and sale units.

415. Exemptions for particular types of sale and sale units.

The lot¹ marking requirement² does not apply to:

- 368 (1) a sale of an agricultural product which, on leaving the holding of its production³: (a) is sold⁴ or delivered to a temporary storage, preparation or packaging station, or to a producer's organisation⁵; or (b) is collected for immediate integration into an operational preparation or processing system⁶;
- 369 (2) a sale to the ultimate consumer⁷ of food⁸ where the food (a) is not prepacked⁹; (b) is packed at the request of the purchaser; or (c) is prepacked for immediate sale¹⁰;
- 370 (3) a sales unit of food which is in a container the area of the largest side of which is less than 10 square centimetres¹¹;
- 371 (4) a sales unit of food which is prepacked, sold as an individual portion for immediate consumption and which is intended as a minor accompaniment to either another food or another service¹²;
- 372 (5) a sales unit of an individual portion of an edible ice¹³ supplied to its seller in bulk packaging containing more than one such portion and bearing the lot marking indication¹⁴ which that portion would, but for this provision, have been required to bear¹⁵;
- 373 (6) a sale after 1 July 1996¹⁶ of: (a) a sales unit marked or labelled before 1 July 1992¹⁷; or (b) a sales unit before 1 January 1997 in a glass bottle intended for re-use which is indelibly marked and therefore bears no label, ring or collar¹⁸; and
- 374 (7) a sales unit of food which is marked or labelled with an indication of minimum durability¹⁹ or 'use by' date²⁰ which consists at least of the uncoded indication of the day and month in that order, whether or not the Food Labelling Regulations 1996²¹ require it to be so marked or labelled²².

1 For the meaning of 'lot' see PARA 414 ante.

2 Ie the Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 3: see PARA 414 ante.

3 Ibid reg 4(a).

4 For the meaning of 'sold' see PARA 414 note 2 ante.

5 Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 4(a)(i).

6 Ibid reg 4(a)(ii).

7 For the meaning of 'ultimate consumer' see PARA 373 note 3 ante; definition applied by ibid reg 2.

8 For the meaning of 'food' see PARA 414 note 3 ante.

9 For the meaning of 'prepacked' see PARA 380 note 7 ante; definition applied by the Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 2.

10 Ibid reg 4(b). For the meaning of 'prepacked for immediate sale' see PARA 390 note 5; definition applied by reg 2.

11 Ibid reg 4(c).

- 12 Ibid reg 4(d).
- 13 For the meaning of 'edible ice' see PARA 387 note 19 ante; definition applied by ibid reg 2.
- 14 For the meaning of 'lot marking indication' see PARA 414 note 4 ante.
- 15 Ibid reg 4(e).
- 16 Ibid reg 4(f). The Food (Lot Marking) Regulations 1996, SI 1996/1502 came into force on this date: reg 1.
- 17 Ibid reg 4(f)(i). For the meaning of 'labelling' see PARA 375 note 3 ante.
- 18 Ibid reg 4(f)(ii).
- 19 For the meaning of 'indication of minimum durability' see PARA 384 note 1 ante; definition applied by ibid reg 2.
- 20 For the meaning of 'use by date' see PARA 386 ante; definition applied by ibid reg 2.
- 21 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARA 373 et seq ante.
- 22 Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 4(g).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(5) LOT MARKING/416. Enforcement and offences.

416. Enforcement and offences.

Each food authority¹ must enforce and execute the Food (Lot Marking) Regulations 1996² in its area³. If any person contravenes these provisions, he is guilty of an offence⁴.

1 For the purposes of the Food (Lot Marking) Regulations 1996, SI 1996/1502, 'food authority' does not include: (1) the council of any district in a non-metropolitan county in England, except where the county functions have been transferred to that council in relation to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple): Food (Lot Marking) Regulations 1996, SI 1996/1502, reg 5(3). As to food authorities see PARA 251 et seq ante.

2 Ie the Food (Lot Marking) Regulations 1996, SI 1996/1502: see PARAS 414-415 ante.

3 Ibid reg 5(2).

4 Ibid reg 5(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5(1). As to the standard scale see PARA 242 note 18 ante.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(6) EUROPEAN PROTECTION OF FOOD NAMES/(i) Introduction/417. Categories of designation.

(6) EUROPEAN PROTECTION OF FOOD NAMES

(i) Introduction

417. Categories of designation.

European law provides for a system of registration of food names which denote foods made in a traditional way or made in a particular region¹. There are three designations of food names: (1) a protected designation of origin ('PDO')²; (2) a protected geographic indication ('PGI')³; and (3) a certificate of specific character ('CSC')⁴.

1 See PARAS 418, 420 post.

2 See PARAS 418-419 post.

3 See PARAS 418-419 post.

4 See PARAS 420-421 post.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(6) EUROPEAN PROTECTION OF FOOD NAMES/(ii) Protected Designations of Origin and Protected Geographic Indications/418. Protected designations of origin and protected geographic indications.

(ii) Protected Designations of Origin and Protected Geographic Indications

418. Protected designations of origin and protected geographic indications.

The protection of designations of origin and of geographical indications of agricultural products and foodstuffs is obtained in accordance with a European Regulation¹.

A protected designation of origin ('PDO') means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product² or a foodstuff which: (1) originates in that region, specific place or country; and (2) the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area³. Certain traditional geographical names which are not the place of origin and certain non-geographical names which fulfil the conditions referred to in head (2) above can be PDOs if they designate a product originating in a region or a specific place⁴.

A protected geographic indication ('PGI') means the name of a region, a specific place or, in exceptional circumstances, a country, used to describe an agricultural product⁵ or a foodstuff which: (a) originates in that region, specific place or country; and (b) which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area⁶.

In the case of both PGIs and PDOs, names that have become generic may not be registered⁷. A name may also not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product⁸.

The difference between PDOs and PGIs is slight: both relate to products which are special because of geographic associations. However, in the case of PGIs, the geographical influence need not as a matter of fact affect the quality or character of the product as a reputation stemming from the geographical origin is enough. In the case of PDOs, all the production, processing and preparation must, subject to a limited exception⁹, take place in the geographical area concerned whereas in the case of PGIs only one of these activities need take place in the geographical area concerned. CSC is used for products where the name does not relate to issues of geographical origin but to the traditional methods of production of the product.

¹ See EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, art 2.1.

² PDOs are available for agricultural products intended for human consumption referred to in the Treaty Establishing the European Community (EC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179), Annex I (formerly Annex II and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ), and of the foodstuffs referred to in EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1), Annex I, and agricultural products listed in Annex II: art 1.1. However, EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) does not apply to wine products and spirit drinks: art 1.1.

3 Ibid art 2.2(a). This cannot extend to where slicing of ham takes place: *Conorzio del Prosciutto di Parma v Asda Stores Ltd and Hygrade Foods Ltd* [1999] ETMR 319, CA ('agricultural products' was limited to 'first-stage processing' and slicing of ham (as opposed to making ham) was not 'first-stage processing').

By way of derogation from EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) art 2.2(a), certain geographical designations may be treated as designations of origin where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that: (1) the production area of the raw materials is limited; (2) special conditions for the production of the raw materials exist; and (3) there are inspection arrangements to ensure that those conditions are adhered to: art 2.4. Only live animals, meat and milk may be considered as raw materials: art 2.5. Use of other raw materials may be authorised in accordance with the procedure laid down in art 15: art 2.5. In order to be eligible for the derogation provided for in art 2.4: (a) the designations in question may be, or have already been, recognised as designations of origin with national protection by the member state concerned, or, if no such scheme exists, have a proven, traditional character and an exceptional reputation and renown (reg 2.6); and (b) applications for registration must be lodged within two years of the entry into force of EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) (reg 2.7).

4 Ibid art 2.3. Examples are 'feta' which means 'slice' in Greek but has come to mean a certain type of Greek cheese, and 'stilton' which refers to a town in which stilton cheese is not made.

5 PGIs are available for agricultural products intended for human consumption referred to in the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179), Annex I (as renumbered: see note 2 supra), and of the foodstuffs referred to in EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1), Annex I, and agricultural products listed in Annex II: art 1.1. As to the application of EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) to wine products and spirit drinks see note 2 supra.

6 Ibid art 2.2(b).

7 Ibid art 3.1. For the purposes of EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1), a 'name that has become generic' means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff: art 3.1. To establish whether or not a name has become generic, account must be taken of all factors, in particular the existing situation in the member state in which the name originates and in areas of consumption, the existing situation in other member states, and the relevant national or European Community laws: art 3.1. Where, following the procedure laid down in arts 6 and 7 (see PARA 419 post), an application of registration is rejected because a name has become generic, the Commission must publish that decision in the Official Journal of the European Communities: art 3.1.

8 Ibid art 3.2.

9 The exception is raw materials (live animals, meat and milk) coming from a larger area if the area is limited and special conditions for the production of the raw materials exist: ibid arts 2.4, 2.5.

UPDATE

418 Protected designations of origin and protected geographic indications

NOTE 3--*Conorzio*, cited, referred on appeal [2001] UKHL 7, [2002] FSR 37, HL, to the European Court of Justice (see further PARA 422 NOTE 9).

NOTE 6--See *Northern Foods plc v Department for the Environment, Food and Rural Affairs (Melton Mowbray Pork Pie Association interested party)* [2005] EWHC 2971 (Admin), [2007] IP & T 430.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(6) EUROPEAN PROTECTION OF FOOD NAMES/(ii) Protected Designations of Origin and Protected Geographic Indications/419. Applications for registration of protected designations of origin and protected geographic indications.

419. Applications for registration of protected designations of origin and protected geographic indications.

In the cases of a protected designation of origin¹ ('PDO') and a protected geographic indication² ('PGI'), only a group³ or, subject to certain conditions⁴, a natural or legal person, is entitled to apply for registration⁵. The application must be sent to the competent authority in the member state in which the geographical area is situated⁶. It must contain the product specification covering matters such as raw materials, methods of production and processing and final characteristics of the product⁷. The member state must check that the application is justified and must forward it, including the product specification and other documents on which it has based its decision, to the European Commission, if it considers that it satisfies the requirements of the European Regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁸. Within a period of six months the Commission must verify, by means of a formal investigation, whether the registration application includes all the necessary particulars and inform the member state concerned of its findings⁹. If the Commission concludes that the name qualifies for protection, details of the application must be published in the Official Journal of the European Communities¹⁰. Member states then have six months to consult interested parties which may result in a statement of objection from either a member state or an interested party¹¹. If there is no objection, the names must be entered in a register kept by the European Commission entitled 'Register of protected designations of origin and protected geographical indications' which contains the names of the groups and the inspection bodies concerned¹². The European Commission must publish these names, and any amendments made to the register, in the Official Journal¹³. If there is an objection, the European Commission must seek to reach an agreement with member states about the application and, failing that, must take a decision as to whether to register the name or not¹⁴. Applications for amendments may be made using the same procedure¹⁵.

PDOs and PGIs are available to products from outside the European Community provided that they meet the requirements¹⁶ and that the country from which the product originates is prepared to provide equivalent protection to European products with a protected designation¹⁷.

1 For the meaning of 'protected designation of origin' see PARA 418 ante.

2 For the meaning of 'protected geographic indication' see PARA 418 ante.

3 For the purposes of EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) (as amended) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, art 5, 'group' means any association, irrespective of its legal form or composition of producers and/or processors working with the same agricultural products or foodstuff: art 5.1. Other interested parties may participate in the group: art 5.1.

4 I.e. conditions laid down in accordance with the procedure provided for in *ibid* art 15.

5 *Ibid* art 5.1. A group or a natural or legal person may apply for registration only in respect of agricultural products or foodstuffs which it produces or obtains within the meaning of art 2(2)(a) or (b) (see PARA 418 ante): art 5.2. In certain circumstances an application may be made by a person not complying with the definition: see EC Commission Regulation 2037/93 (OJ L185, 28.7.93, p 5) laying down detailed rules of application of EC Council Regulation 2081/92, art 1.

6 EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1), art 5.4. In England and Wales the competent authority is the Ministry of Agriculture, Fisheries and Food (see PARA 224 ante).

7 See *ibid* art 5.3. To be eligible to use a PDO or a PGI, an agricultural product or foodstuff must comply with a specification: art 4.1. As to the minimum contents of the product specification see art 4.2.

8 *Ibid* art 5.5.

9 *Ibid* art 6.1. The particulars are those provided for in art 4: see art 6.1.

10 See *ibid* art 6.2.

11 See *ibid* art 7.

12 See *ibid* art 6.3.

13 See *ibid* art 6.4. Any amendments to the register must be made in accordance with arts 9, 11: art 6.4.

14 See *ibid* art 7. The decision must be taken in accordance with the procedure laid down in art 15: see art 7.

15 See *ibid* art 9.

16 I.e. the requirements listed in *ibid* arts 4 (see note 7 *supra*) and 10 (see *PARA 423* note 3 *post*): see art 12.

17 See *ibid* art 16.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(6) EUROPEAN PROTECTION OF FOOD NAMES/(iii) Certificates of Special Character/420. Certificates of special character.

(iii) Certificates of Special Character

420. Certificates of special character.

The European Regulation on certificates of specific character for agricultural products and foodstuffs¹ lays down rules under which a European Community certificate of specific character² ('CSC') may be obtained for listed agricultural products³ which are intended for human consumption, and listed foodstuffs⁴.

The European Commission may set up and administer a register of certificates of specific character which will list the names of such agricultural products and foodstuffs of which the specific character has been recognised at European Community level⁵. In order to appear in this register, an agricultural product or foodstuff must either be produced using traditional raw materials or be characterised by a traditional composition or a mode of production and/or processing reflecting a traditional type of production and/or processing⁶. Registration is not permitted in the case of an agricultural product or foodstuff, the specific character of which is due to its provenance or geographical origin, or solely to application of a technological innovation⁷.

To be registered, the name must: (1) be specific in itself; or (2) express the specific character of the agricultural product or the foodstuff⁸. However, a name expressing specific character, as referred to in head (2) above, may not be registered if: (a) it refers only to claims of a general nature used for a set of agricultural products or foodstuffs, or to those provided for by specific European Community legislation; (b) it is misleading, such as that, in particular, which refers to an obvious characteristic of the product or does not correspond to the specification or to the consumer's expectations of the product⁹.

1 Ie EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) (as amended) on certificates of special character for agricultural products and foodstuffs.

2 For the purposes of EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9), 'specific character' means the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category: art 2.1. However, the presentation of an agricultural product or a foodstuff is not regarded as a feature within the meaning of 'specific character': art 2.1. Specific character may not be restricted to qualitative or quantitative composition or to a mode of production laid down in European Community or national legislation, in standards set by standardisation bodies or in voluntary standards unless that legislation or standard has been established in order to define the specific character of a product: art 2.1. For the purposes of EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9), 'certificate of special character' means recognition by the European Community of the specific character of a product by means of its registration in accordance with this Regulation: art 2.3.

3 Ie agricultural products listed in the Treaty Establishing the European Community (EC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179), Annex II: EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) art 1.1.

4 Ibid art 1.1. The foodstuffs are those listed in the Annex: art 1.1.

5 Ibid art 3.

6 Ibid art 4.1.

7 Ibid art 4.2.

8 Ibid art 5.1. In order to be registered, a specific name as referred to in head (1) in the text must be traditional and comply with national provisions or be established by custom: art 5.3.

9 Ibid art 5.2.

UPDATE

420-423 Effect of protection of designation ... Administration and monitoring

NOTES AND TEXT--Regulation 2082/92: repealed and replaced by EC Council Regulation 509/2006 (OJ L93 31.3.2006 p 1) on agricultural products and foodstuffs as traditional specialities guaranteed. Regulation 2006/509 is broadly similar to the repealed Regulation, but replaces the term 'certificate of specific character' with the term 'traditional speciality guaranteed', clarifies some of the definitions, adds to some of the procedures for application and monitoring, and makes it compulsory (from 1 May 2009) for producers of foodstuffs qualifying for the 'traditional speciality guaranteed' designation, to include the term or the corresponding Community symbol on their packaging. References to the repealed Regulation should be construed as references to Regulation 509/2006: see art 21, Annex II. As to detailed rules for the implementation of Regulation 509/2006, see EC Commission Regulation 1216/2007 (OJ L275, 19.10.2007, p 3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/5. LABELLING, DESCRIPTION AND ADVERTISING OF FOOD/(6) EUROPEAN PROTECTION OF FOOD NAMES/(iii) Certificates of Special Character/421. Applications for registration of certificates of special character.

421. Applications for registration of certificates of special character.

In the case of a certificate of special character¹ ('CSC'), only a group² is entitled to apply for registration of the specific character of an agricultural product or foodstuff³. The application for registration comprising the product specification⁴ must be submitted to the competent authority of the member state in which the group is established⁵. The competent authority must forward the application to the European Commission if it considers that the relevant requirements are fulfilled⁶. The European Commission must then forward the translated application for registration to the other member states within a period of six months from the date of receipt of the application and, as soon as this has been carried out, the main points of the application must be published in the Official Journal of the European Communities⁷. Member states must ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application⁸. Within five months of the date of publication⁹, any natural or legal person legitimately concerned by the registration may object to the intended registration by sending a duly substantiated statement to the competent authorities of the member state in which that person resides or is established¹⁰. The competent authorities of the member states must adopt the necessary measures to take account of any such statement within the period laid down¹¹. If no objections are notified to the European Commission within six months, the main points¹² must be entered in the register¹³ and published in the Official Journal¹⁴. If objections are notified, the European Commission must, within three months, ask the member states concerned to seek agreement between themselves in accordance with their internal procedures within a further period of three months¹⁵. If agreement is reached, the member states in question must notify the European Commission of all factors that enabled that agreement to be reached and the opinions of the applicant and the objector¹⁶. If no agreement is reached, the European Commission must decide on the registration in accordance with the specified procedure¹⁷. Applications for amendments may be made by a shortened procedure¹⁸.

CSCs are available to products from outside the European Community provided that they meet the requirements¹⁹ and that the country from which they originate is prepared to provide equivalent protection to European products with a protected designation²⁰.

1 For the meaning of 'certificate of special character' see PARA 420 ante; and for the meaning of 'special character' see PARA 420 ante.

2 For the meaning of 'group' see PARA 419 note 3 ante.

3 EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) on certificates of special character for agricultural products and foodstuffs, art 7.1.

4 As to the minimum contents of the product specification see *ibid* art 6.

5 *Ibid* art 7.2. In England and Wales the competent authority is the Ministry of Agriculture, Fisheries and Food (see PARA 224 ante).

6 *Ibid* art 7.3. The relevant requirements are those prescribed by arts 4, 5 and 6: see note 4 *supra*; and PARA 420 ante.

7 See *ibid* art 8.1.

8 *Ibid* art 8.2. In addition, and in accordance with the rules in force in the member states, the competent authorities may provide access to other parties with a legitimate interest: art 8.2.

- 9 Ie the date of publication referred to in ibid art 8.1: see note 7 supra.
- 10 Ibid art 8.3.
- 11 Ibid art 8.4. Member states may also submit objections on their own initiative: art 8.4.
- 12 Ie the main points referred to in ibid art 8.1: see note 7 supra.
- 13 Ie the register provided for in ibid art 3: see PARA 420 note 5 ante.
- 14 Ibid art 9.1.
- 15 Ibid art 9.2.
- 16 Ibid art 9.2(a). If the information received pursuant to art 6.2 is unchanged, the European Commission must proceed in accordance with art 9.1 (see note 14 supra), but otherwise it must again initiate the procedure laid down in art 8 (see notes 7-11 supra): art 9.2(a).
- 17 Ibid art 9.2(b). The specified procedure is that laid down in art 19: art 9.2(b).
- 18 See ibid art 11.
- 19 Ie the requirements listed in ibid arts 4 (see PARA 420 notes 6, 7 ante), 6 (see note 4 supra) and 14 (see PARA 423 notes 2, 3 post): see art 16.
- 20 See ibid art 16.

UPDATE

420-423 Effect of protection of designation ... Administration and monitoring

NOTES AND TEXT--Regulation 2082/92: repealed and replaced by EC Council Regulation 509/2006 (OJ L93 31.3.2006 p 1) on agricultural products and foodstuffs as traditional specialities guaranteed. Regulation 2006/509 is broadly similar to the repealed Regulation, but replaces the term 'certificate of specific character' with the term 'traditional speciality guaranteed', clarifies some of the definitions, adds to some of the procedures for application and monitoring, and makes it compulsory (from 1 May 2009) for producers of foodstuffs qualifying for the 'traditional speciality guaranteed' designation, to include the term or the corresponding Community symbol on their packaging. References to the repealed Regulation should be construed as references to Regulation 509/2006: see art 21, Annex II. As to detailed rules for the implementation of Regulation 509/2006, see EC Commission Regulation 1216/2007 (OJ L275, 19.10.2007, p 3).

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(iv) Common Provisions

422. Effect of protection of designation.

A protected designation is reserved to the products to which it applies. In the cases of a protected designation of origin¹ ('PDO') and a protected geographical indication² ('PGI'), the name, the initials PDO and PGI and the phrases 'protected designation of origin' and 'protected geographical indication' (or in each case the relevant equivalents in another language) and a special European Community symbol are also reserved for use with registered products³. In the case of a certificate of special character ('CSC'), the name, the indication 'Traditional Speciality Guaranteed' (or the equivalent in another language) and a special European Community symbol are also reserved for use with registered products⁴.

PGI and PDO products are protected against: (1) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name; (2) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar; (3) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin; and (4) any other practice liable to mislead the public as to the true origin of the product⁵. Registration of a trade mark which would result in such a situation will be refused⁶.

Member states are required to take the necessary measures to ensure that CSC products are protected against misuse or misleading use of the name, indication or symbol⁷.

There are no criminal sanctions in England and Wales for infringement of protected designations. Furthermore, at least in respect of PGIs and PDOs, there appear to be no civil remedies available under the European Regulation⁸ and any claim would have to rely on the common law of passing off, which might not give the full protection envisaged by that Regulation⁹.

1 For the meaning of 'protected designation of origin' see PARA 418 ante.

2 For the meaning of 'protected geographical indication' see PARA 418 ante.

3 See EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, art 8; and EC Commission Regulation 2037/93 (OJ L185, 28.7.93, p 5) laying down detailed rules of application of EC Council Regulation 2081/92, arts 5a, 5b, Annexes I, II.

4 See EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) on certificates of special character for agricultural products and foodstuffs, arts 12, 13 and 15; and EC Commission Regulation 1848/93 (OJ L168, 10.7.93, p 35) laying down detailed rules for the application of EC Council Regulation 2082/92, art 4, Annexes I and II.

5 EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) art 13.1. However, member states may maintain national measures authorising the use of the expressions referred to in head (2) in the text for a period of not more than five years after the date of publication of EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1),

provided that the products have been marketed legally using such expressions for at least five years before that date of publication, and the labelling clearly indicates the true origin of the product: art 13.2. However, this exception may not lead to the marketing of products freely on the territory of a member state where such expressions are prohibited: art 13.2.

6 See *ibid* art 14.

7 See EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) art 17.

8 *Ie* under EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1).

9 See *Consorzio del Prosciutto di Parma v Asda Stores Ltd and Hygrade Foods Ltd* [1999] ETMR 319, CA, where it was held that EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) was not intended to have direct effect and did not contain transparent rights. Part of the reasoning in support of that conclusion was that there was no way in which a person could discover details of the specification from the register, whereas in relation to CSCs, EC Commission Regulation 1848/93 (OJ L168, 10.7.93, p 35), art 6 provides for such discovery. However, it is submitted that the principal European Regulation relating to CSCs (EC Council Regulation 2082/92 (see PARAS 420-421 ante, 423 post)) reads more as a set of instructions to member states than as something intended to create directly enforceable rights: see *eg ibid* art 17. As to passing off see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 304 et seq.

UPDATE

420-423 Effect of protection of designation ... Administration and monitoring

NOTES AND TEXT--Regulation 2082/92: repealed and replaced by EC Council Regulation 509/2006 (OJ L93 31.3.2006 p 1) on agricultural products and foodstuffs as traditional specialities guaranteed. Regulation 2006/509 is broadly similar to the repealed Regulation, but replaces the term 'certificate of specific character' with the term 'traditional speciality guaranteed', clarifies some of the definitions, adds to some of the procedures for application and monitoring, and makes it compulsory (from 1 May 2009) for producers of foodstuffs qualifying for the 'traditional speciality guaranteed' designation, to include the term or the corresponding Community symbol on their packaging. References to the repealed Regulation should be construed as references to Regulation 509/2006: see art 21, Annex II. As to detailed rules for the implementation of Regulation 509/2006, see EC Commission Regulation 1216/2007 (OJ L275, 19.10.2007, p 3).

422 Effect of protection of designation

NOTE 9--*Consorzio*, cited, referred on appeal [2001] UKHL 7, [2002] FSR 37 to the European Court of Justice: see Case C-108/01 *Consorzio del Prosciutto di Parma v Asda Stores Ltd* [2003] 2 CMLR 639, ECJ.

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423. Administration and monitoring of protected designations.

Every member state must set up a system of inspection to ensure that products carrying the protected designations¹ comply with their specifications². The cost of such inspection systems are to be met by the users of the designations³. A member state may complain to another that a condition of a specification is not being complied with and, in the event of repeated irregularities, if the member states concerned cannot reach agreement, the European Commission may, after following appropriate procedures, cancel the registration⁴.

1 The protected designations are the protected designation of origin ('PDO') (see PARA 418 ante), the protected geographical indication ('PGI') (see PARA 418 ante), and the certificate of special character ('CSC') (see PARA 420 ante).

2 EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, art 10(1); EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) on certificates of special character for agricultural products and foodstuffs, art 14(1).

3 See EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1), art 10; and EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9), art 14.

4 See EC Council Regulation 2081/92 (OJ L208, 24.7.92, p 1) art 11; and EC Council Regulation 2082/92 (OJ L208, 24.7.92, p 9) art 10.

UPDATE

420-423 Effect of protection of designation ... Administration and monitoring

NOTES AND TEXT--Regulation 2082/92: repealed and replaced by EC Council Regulation 509/2006 (OJ L93 31.3.2006 p 1) on agricultural products and foodstuffs as traditional specialities guaranteed. Regulation 2006/509 is broadly similar to the repealed Regulation, but replaces the term 'certificate of specific character' with the term 'traditional speciality guaranteed', clarifies some of the definitions, adds to some of the procedures for application and monitoring, and makes it compulsory (from 1 May 2009) for producers of foodstuffs qualifying for the 'traditional speciality guaranteed' designation, to include the term or the corresponding Community symbol on their packaging. References to the repealed Regulation should be construed as references to Regulation 509/2006: see art 21, Annex II. As to detailed rules for the implementation of Regulation 509/2006, see EC Commission Regulation 1216/2007 (OJ L275, 19.10.2007, p 3).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/424. Introduction.

6. PARTICULAR FOODS

424. Introduction.

In addition to the general law relating to the composition, labelling, description and advertising of food¹, there are a number of provisions relating to specific foods². In general, these stem from attempt to create a single market in the European Union through the harmonisation of the law already in existence in all member states³. This approach proved slow and difficult and, for those foods in relation to which harmonisation had not been achieved, was superseded by use of the principle of transparency which seeks to ensure that a food lawfully marketed in one member state can be sold in another, with the consumer safeguarded from being misled by clear labelling. There remain, however, many specific legal provisions on particular foods which are dealt with below⁴. The general rules on labelling apply to the particular foods mentioned below, except where specifically excluded.

1 As to the composition of food see PARA 359 et seq ante. As to labelling see PARA 371 et seq ante.

2 See PARA 425 et seq post.

3 See PARA 359 ante. See also EUROPEAN COMMUNITIES.

4 See PARA 425 et seq post.

UPDATE

424 Introduction

TEXT AND NOTES--As to provisions on food for particular nutritional purposes see the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002, SI 2002/1817 (amended by SI 2004/649, SI 2005/2626, SI 2006/3116, SI 2007/2591); the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2002, SI 2002/2939 (amended by SI 2004/1012, SI 2005/3254, SI 2007/116, SI 2007/2753); and PARA 424A. As to food supplements and vitamins see PARA 424B.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/424A.
Food for particular nutritional uses.

424A. Food for particular nutritional uses.

No person may sell¹ any designated PNU food² being a food to which certain categories of substances³ have been added for a specific nutritional purpose unless (1) that substance is listed under the relevant category⁴; (2) that substance complies with the relevant purity criteria⁵; and (3) for specified substances in relation to England, any conditions of use are satisfied⁶.

No person may sell any designated PNU food in the manufacture of which any substance has been used for a specific nutritional purpose unless that food is safe when used in accordance with the manufacturer's instructions, if any, and fulfils the particular nutritional requirements of the persons for whom it is intended, as established by generally accepted scientific data⁷. The manufacturer or, as the case may be, the importer of a designated PNU food in the manufacture of which a substance has been used for a specific nutritional purpose must supply to the Food Standards Agency on request a copy of the scientific work and data establishing that the use of that substance in the manufacture of that food results in a food which meets the above criteria⁸, or, if such work and data are contained in a publication which is readily available, a reference to that publication⁹.

The manufacturer or, where appropriate, the importer of any notifiable food¹⁰ must not sell any such food unless at least three months before placing food of that particular type on the market in England for the first time he notified the Food Standards Agency in writing by forwarding to it a model of the label to be used for that food and details of the composition of the food¹¹. However, the above requirement does not apply if the manufacturer or, where appropriate, the importer has already notified the Food Standards Agency before placing food of that particular type on the market elsewhere in the United Kingdom for the first time in accordance with an equivalent provision having effect there¹².

Each food authority¹³ must enforce and execute the above provisions in its area¹⁴. If any person contravenes certain provisions¹⁵, or contravenes certain other provisions¹⁶ without reasonable excuse, he is guilty of an offence¹⁷.

1 'Sell' includes possess for sale and offer, expose or advertise for sale: Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002, SI 2002/1817, reg 2(1); Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2002, SI 2002/2939, reg 2(1).

2 'PNU food' means a food for a particular nutritional use which, owing to its special composition or process of manufacture, is clearly distinguishable from food intended for normal consumption, and which is sold in such a way as to indicate its suitability for its claimed particular nutritional purpose; 'designated PNU food' means any PNU food other than infant formulae, follow-on formulae, processed cereal-based foods and baby foods intended for infants and young children; 'particular nutritional use' means the fulfilment of the particular nutritional requirements of (1) certain categories of persons whose digestive processes are, or whose metabolism is, disturbed; or (2) certain categories of person whose physiological condition renders them able to obtain a special benefit from the controlled consumption of any substance in food; or (3) infants or young children in good health: SI 2002/1817 reg 2(1); SI 2002/2939 reg 2(1).

3 Those categories are vitamins, minerals, amino acids, carnitine and taurine, nucleotides, or choline and inositol: SI 2002/1817 reg 3(2); SI 2002/2939 reg 3(2).

4 The relevant categories are (1) in the case of any food for special medical purposes, the substances listed in SI 2002/1817 reg 3(1)(a), Schs 1, 2 (reg 3(1), Sch 2 substituted, Sch 1 amended by SI 2004/649; SI 2002/1817 Sch 1 further amended, Sch 2 amended by SI 2006/3116); SI 2002/2939 reg 3(1)(a), Schs 1, 2 (reg 3(1), Sch 2 substituted, Sch 1 amended by SI 2004/1012; SI 2002/2939 Sch 1 further amended, Sch 2 amended

by SI 2007/116); and (2) in any other case, the substances listed in SI 2002/1817 Sch 1 (as so amended) or SI 2002/2939 Sch 1, as the case may be.

5 SI 2002/1817 reg 3(1) (as substituted: see NOTE 4); SI 2002/2939 reg 3(1) (as substituted: see NOTE 4). The relevant purity criteria are (a) the purity criteria, if any, specified by Community legislation for the use of the substance in question in the manufacture of food for purposes other than those covered by EC Commission Directive 2001/15; or (2) in the absence of such purity criteria, generally acceptable purity criteria for the substance in question recommended by international bodies: SI 2002/1817 reg 3(3); SI 2002/2939 reg 3(3). 'EC Commission Directive 2001/15' (replaced by EC Commission Regulation 953/2009 (OJ L269, 14.10.2009, p 9)) means Directive 2001/15 as amended by EC Commission Directive 2004/5 and EC Commission Directive 2006/34 and as read with EC Commission Directive 2004/6 (replaced by EC Commission Regulation 953/2009 (OJ L269, 14.10.2009, p 9)) derogating from Directive 2001/15 to postpone the application of the prohibition of trade to certain products: SI 2002/1817 reg 2(1) (amended by SI 2004/649, SI 2006/3116); SI 2002/2939 reg 2(1) (amended by SI 2004/1012, SI 2007/116).

6 SI 2002/1817 reg 3(1) (as substituted: see NOTE 4); SI 2002/2939 reg 3(1) (as substituted: see NOTE 4). The substances and the conditions of their use are specified in SI 2002/1817 Sch 2; SI 2002/2939 Sch 2 (both as substituted: see NOTE 4). The restrictions under SI 2002/1817 reg 3(1); SI 2002/2939 reg 3(1) do not apply until 1 January 2010 in the case of a substance falling within one of the categories mentioned in SI 2002/1817 reg 3(2); SI 2002/2939 reg 3(2) (see NOTE 3) and listed under that category in SI 2002/1817 Sch 3 (added by SI 2004/649); SI 2002/2939 Sch 3 (added by SI 2004/1012) if the European Food Safety Authority has not given an unfavourable opinion in respect of the use of that substance in the manufacture of any designated PNU food, and that substance was used in the manufacture of a food for a particular nutritional use which was on sale in the European Community on 11 February 2004: SI 2002/1817 reg 3(5) (added by SI 2004/649, amended by SI 2007/2591); SI 2002/2939 reg 3(5) (added by SI 2004/1012, amended by SI 2007/2753).

7 SI 2002/1817 reg 3(4); SI 2002/2939 reg 3(4).

8 Ie the criteria set out in SI 2002/1817 reg 3(4) or SI 2002/2939 reg 3(4).

9 SI 2002/1817 reg 4; SI 2002/2939 reg 4.

10 'Notifiable food' means any L-tryptophan food which is (1) intended for use in energy-restricted diets for weight reduction; (2) intended to meet the expenditure of intense muscular effort, especially for sportsmen; or (3) for persons suffering from carbohydrate-metabolism disorders (diabetes): SI 2002/1817 reg 5(3); SI 2002/2939 reg 5(3). 'L-tryptophan food' means any designated PNU food being a food to which L-tryptophan, or any of its sodium, potassium, calcium or magnesium salts or its hydrochloride, has been added for a specific nutritional purpose: SI 2002/1817 reg 2(1); SI 2002/2939 reg 2(1).

11 SI 2002/1817 reg 5(1); SI 2002/2939 reg 5(1).

12 SI 2002/1817 reg 5(2); SI 2002/2939 reg 5(2).

13 'Food authority' does not include (1) the council of a district of a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change; or (2) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer: SI 2002/1817 reg 2(1); SI 2002/2939 reg 2(1).

14 SI 2002/1817 reg 6; SI 2002/2939 reg 6.

15 Ie the provisions of SI 2002/1817 reg 3(1), (4) or SI 2002/2939 reg 3(1), (4), as the case may be.

16 Ie the provisions of SI 2002/1817 reg 4, 5(1) or SI 2002/2939 reg 4, 5(1), as the case may be.

17 SI 2002/1817 reg 7; SI 2002/2939 reg 7. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: SI 2002/1817 reg 7; SI 2002/2939 reg 7. As to the standard scale see PARA 242 NOTE 18.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/424B.
Food supplements and vitamins.

424B. Food supplements and vitamins.

The following provisions apply to food supplements¹ sold as food and presented as such, but do not apply to medicinal products².

No person may sell³ any food supplement to the ultimate consumer⁴ unless it is prepacked⁵. No person may sell a food supplement in the manufacture of which a vitamin or mineral has been used unless that vitamin or mineral is listed⁶, and is in a specified form⁷ and meets the relevant purity criteria⁸.

No person may sell a food supplement which is ready for delivery to the ultimate consumer or to a catering establishment⁹ unless the name under which it is sold is 'food supplement'¹⁰. No person may sell a food supplement which is ready for delivery to the ultimate consumer or to a catering establishment unless it is marked or labelled with (1) the name of the category of any vitamin or mineral or other substance with a nutritional or physiological effect which characterises the product or an indication of the nature of that vitamin or mineral or other substance; (2) the portion of the product recommended for daily consumption; (3) a warning not to exceed the stated recommended daily dose; (4) a statement to the effect that food supplements should not be used as a substitute for a varied diet; (5) a statement to the effect that the product should be stored out of the reach of young children; and (6) the amount of any vitamin or mineral or other substance with a nutritional or physiological effect which is present in the product¹¹. No person may sell any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment if the labelling, presentation or advertising of that food supplement includes any mention, express or implied, that a balanced and varied diet cannot provide appropriate quantities of nutrients in general¹².

No person may sell any food supplement which is ready for delivery to the ultimate consumer or is ready for delivery to a catering establishment and is prepacked unless the particulars with which it is required to be marked or labelled¹³ appear (a) on the packaging; (b) on a label attached to the packaging; or (c) on a label which is clearly visible through the packaging, except where the sale is otherwise than to the ultimate consumer such particulars may, alternatively, appear only on the commercial documents relating to the food supplement where it can be guaranteed that such documents, containing all such particulars, either accompany the food supplement to which they relate or were sent before, or at the same time as, delivery of the food supplement, and provided also that certain particulars¹⁴ are also marked or labelled on the outermost packaging in which that food supplement is sold¹⁵. No person may sell any food supplement which is ready for delivery to a catering establishment and is not prepacked, unless the particulars with which it is required to be marked or labelled (i) appear on a label attached to the food supplement; (ii) on a ticket or notice which is readily discernible by the intending purchaser at the place where he chooses the food supplement; or (iii) in commercial documents relating to the food supplement where it can be guaranteed that such documents either accompany the food supplement to which they relate or were sent before, or at the same time as, delivery of the food supplement¹⁶. No person may sell any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment unless the particulars with which it is required to be marked or labelled are easy to understand, clearly legible and indelible and, when a food is sold to the ultimate consumer, those particulars are marked in a conspicuous place in such a way as to be easily visible¹⁷. No person may sell any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment if the particulars with which it is required to be marked or labelled are in any way hidden, obscured or interrupted by any other written or pictorial matter¹⁸.

Each food authority¹⁹ must enforce and execute the above provisions in its area²⁰. If any person contravenes certain provisions²¹, he is guilty of an offence²². In any proceedings for an offence under these provisions, it is a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these provisions and that the food complies with that legislation, and in the case of export to a member state, that the legislation complies with specified EC provisions²³.

Similar provision with respect to food supplements is made in relation to Wales²⁴.

Provision is made in relation to England and Wales for the implementation of EU legislation concerning the addition of vitamins, minerals and other substances to food²⁵.

1 'Food supplement' means any food the purpose of which is to supplement the normal diet and which (1) is a concentrated source of a vitamin or mineral or other substance with a nutritional or physiological effect, alone or in combination; and (2) is sold in dose form: Food Supplements (England) Regulations 2003, SI 2003/1387 reg 2(1). 'Dose form' means a form such as capsules, pastilles, tablets, pills, and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids or powders designed to be taken in measured small unit quantities: reg 2(1).

2 Ibid reg 3 (amended by SI 2009/3251). 'Medicinal products' are defined by EC Council Directive 2001/83 on the Community code relating to medicinal products for human use. The Food Supplements (England) Regulations 2003, SI 2003/1387 do not apply to medicinal products as defined by EC Directive 2001/83: SI 2003/1387 reg 3(2) (added by SI 2009/3251).

3 'Sell' includes possess for sale and offer, expose or advertise for sale: SI 2003/1387 reg 2(1).

4 'Ultimate consumer' means any person who purchases otherwise than (1) for the purpose of resale; (2) for the purposes of a catering establishment; or (3) for the purposes of a manufacturing business: ibid reg 2(1). 'Catering establishment' means a restaurant, canteen, club, public house, school, hospital or similar establishment, including a vehicle or a fixed or mobile stall, where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation: reg 2(1). 'Preparation' includes manufacture and any form of processing or treatment, and 'prepared' is to be construed accordingly: reg 2(1).

5 Ibid reg 4. A food supplement is to be regarded as prepacked if (1) it is ready for sale to the ultimate consumer or to a catering establishment, and (2) it is put into packaging before being offered for sale in such a way that the food supplement cannot be altered without opening or changing the packaging: reg 2(2).

6 See EC Directive 2002/46 Annex II.

7 See SI 2003/1387 Sch 2 (amended by SI 2007/330).

8 SI 2003/1387 reg 5(1). The relevant purity criteria are (1) the purity criteria, if any, specified by Community legislation for the use of the substance in question in the manufacture of food for purposes other than those covered by EC Council Directive 2002/46; or (2) in the absence of such purity criteria, generally acceptable purity criteria for the substance in question recommended by international bodies: SI 2003/1387 reg 5(2). In the case of a vitamin or mineral which is not listed in Sch 1 col 1 or is not in a form listed in Sch 2, the prohibitions under reg 5(1) will not apply until 1 January 2010 providing that (1) the substance in question was used in the manufacture of a food supplement which was on sale in the European Community on 12 July 2002; (2) a dossier supporting use of the substance in question was submitted to the Commission by the Food Standards Agency (see PARA 225 et seq) or a member State other than the United Kingdom by 12 July 2005; and (3) the European Food Safety Authority (see PARA 260) has not given an unfavourable opinion in respect of the use of that substance, or its use in that form in the manufacture of food supplements: reg 5(3).

9 For the meaning of 'catering establishment' see NOTE 4.

10 SI 2003/1387 reg 6(1).

11 Ibid reg 6(2). The information required in TEXT head 6 must (1) be given in numerical form; (2) in the case of a vitamin or mineral listed in Sch 1 col 1, be given using the relevant unit specified in col 2; (3) be the amount per portion of the product as recommended for daily consumption on the labelling of the product; (4) be an average amount based on the manufacturer's analysis of the product; and (5) in the case of a vitamin or mineral listed in the annex to EC Council Directive 90/496 on nutrition labelling for foodstuffs be expressed also

as a percentage, which may also be given in graphical form, of the relevant recommended daily allowance specified therein: SI 2003/1387 reg 6(3).

12 Ibid reg 6(4).

13 Ie in accordance with ibid reg 6(2).

14 Ie required by the Food Labelling Regulations 1996, SI 1996/1499, reg 5(a), (c), and (e) (see PARA 402).

15 SI 2003/1387 reg 7(1).

16 Ibid reg 7(2).

17 Ibid reg 7(3).

18 Ibid reg 7(4).

19 'Food authority' does not include (1) the council of a district of a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (see PARA 251 NOTE 2): SI 2003/1387 reg 8(2).

20 Ibid reg 8(1).

21 Ie the provisions of ibid regs 4-7.

22 Ibid reg 9. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 9. As to the standard scale see PARA 242 NOTE 18.

23 Ibid reg 10 (revoked by SI 2005/2626). As to the specified EC provisions see EC Council Directive 2002/46 on the approximation of the laws of the member states relating to food supplements. See also Case C-154/04 *R (on the application of Alliance for Natural Health) v Secretary of State for Health*; Case C-155/04 *R (on the application of National Association of Health Stores) v Secretary of State for Health* [2005] All ER (D) 128 (Jul), ECJ (unsuccessful challenge to validity EC Council Directive 2002/46).

24 See the Food Supplements (Wales) Regulations 2003, SI 2003/1719 (amended by SI 2005/3254, SI 2007/1076, SI 2009/3252).

25 See the Addition of Vitamins, Minerals and Other Substances (England) Regulations 2007, SI 2007/1631, and the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007, SI 2007/1984 (amended by SI 2009/3252).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/425. Baby and infant foods.

425. Baby and infant foods.

Baby foods¹ and processed cereal-based foods² are subject to labelling and compositional requirements³. Such foods may only be sold if they are labelled with⁴: (1) a statement as to the age from which the food may be used; (2) if that age is less than six months, whether or not gluten is present; (3) the available energy value and the protein, carbohydrate and fat content of the food as sold; (4) the average quantity of each mineral and vitamin in respect of which a maximum or minimum compositional requirement is specified by law⁵; and (5) if the food requires preparation, appropriate instructions and a statement as to the importance of following those instructions⁶.

The general labelling rules⁷ and the special rules on claims that food is for a particular nutritional use apply to these products⁸.

No person may manufacture any baby food or processed cereal-based food: (a) from any ingredient other than one whose suitability for particular nutritional use by infants and young children has been established by generally accepted scientific data; (b) which does not comply with the compositional requirements⁹; (c) which contains certain added nutritional substances¹⁰; or (d) which contains any substance in such quantity as to endanger the health of infants or young children¹¹.

If any person contravenes these requirements¹² he is guilty of an offence¹³. It is a defence for the person charged to prove that the food was intended for export to a country which has analogous legislation and it complies with that legislation¹⁴.

Each food authority¹⁵ is required to enforce and execute these provisions in its area¹⁶.

1 'Baby foods' means foods for particular nutritional use fulfilling the particular requirements of infants and young children in good health and intended for use by infants while they are being weaned and by young children as a supplement to their diet or for their progressive adaptation to ordinary food, other than processed cereal-based foods: Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 1(2). The regulations do not apply to any baby food which is a milk intended for young children: reg 2.

2 'Processed cereal-based foods' means foods for particular nutritional use within certain categories fulfilling the particular requirements of infants and young children in good health and intended for use by infants while they are being weaned and by young children as a supplement to their diet or for their progressive adaptation to ordinary food: *ibid* reg 1(2). The categories of food are: (1) simple cereals which are or have to be reconstituted with milk or other appropriate nutritious liquids; (2) cereals with an added high-protein food which are or have to be constituted with water or other protein-free liquid; (3) pastas which are to be used after cooking in boiling water or other appropriate liquids; and (4) rusks and biscuits which are to be used either directly or after pulverisation with the addition of water, milk or other suitable liquids: reg 1(2), Sch 1 Pt I.

3 See the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042 (as amended), which implement EC Commission Directive 96/5 (OJ L49, 28.2.96, p 17) on processed cereal-based foods and baby foods for infants and young children (as amended).

4 Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 3 (amended by SI 1999/275).

5 *Ie* the requirements set out in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 4(1), Sch 2 in the case of baby foods and reg 4(1), Sch 1 Pt II in the case of processed cereal-based food.

6 *Ibid* reg 4(1). In addition, there are further special rules with regard to the indication of quantities of certain minerals and vitamins: see reg 4(2), (3), Schs 4, 5.

7 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

8 As to claims in relation to suitability for infants and young children see PARA 407 ante.

9 For the compositional requirements see the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, Sch 1 Pt II as read with Sch 2 in the case in the baby foods, and read with Sch 3 in the case of processed cereal-based foods.

10 For the specified nutritional substances see ibid Sch 4, Sch 6 (added by SI 1999/275).

11 See the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 5 (amended by SI 1999/275). With effect from 1 July 2002, this provision also applies to food which: (1) if it is manufactured as ready for consumption, contains; and (2) if it is not so manufactured, would if reconstituted according to its manufacturer's instructions contain, residues of any individual pesticide at a level exceeding 0.01 mg/kg: Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 5 (prospectively amended by SI 2000/1510). There are maximum limits for added nutrients for specified foods: see the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 5A (added by SI 1999/275).

12 See the requirements of the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, regs 3 (as amended), 4, 5 (as amended) or 5A (as added).

13 Ibid reg 6(1) (amended by SI 1999/275). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 6(1) (as so amended). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: see the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 9.

14 See ibid reg 8. In the case of export to a state in the European Economic Area, the legislation must comply with the provisions of EC Commission Directive 96/5 (OJ L49, 28.2.96, p 17) (as amended): see the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 8.

15 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, reg 2(1). As to food authorities see PARA 251 et seq ante.

16 Ibid reg 7.

UPDATE

425 Baby and infant foods

TEXT AND NOTES 1-6, 9-14--SI 1997/2042 replaced by the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003, SI 2003/3207 (amended by SI 2005/2626, SI 2005/2630, SI 2007/2591), and the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004, SI 2004/314 (amended by SI 2005/3111, SI 2005/3254, SI 2007/2753).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/426.
Infant formula and follow-on formula.

426. Infant formula and follow-on formula.

Requirements are imposed as to the composition, labelling, advertising, promotion and export of infant formula¹ and follow-on formula². No person may sell any food which is labelled or otherwise represented as being an infant formula or as satisfying by itself the nutritional requirements of normal healthy infants during the first four to six months of life unless that food meets certain requirements³. Those requirements are that the food: (1) has been manufactured in accordance with prescribed requirements⁴; (2) complies with compositional requirements⁵; (3) is labelled as required⁶; and (4) is presented as required⁷. There is a similar provision in relation to the sale of follow-on formula⁸.

No person may publish or display any advertisement⁹ for an infant formula except in a publication specialising in baby care and distributed only through the health care system, in a scientific publication, or for the purposes of trade prior to the retail trade in a publication of which the intended readership is other than the general public¹⁰. Such advertisements may only contain information of a scientific and factual nature and must not imply or seek to create a belief that bottle-feeding is equivalent to or superior to breast-feeding¹¹. Advertisements for infant formula and follow-on formula must comply with the labelling requirements for those foods¹².

There are restrictions on the promotion of infant formula including a ban on giving it away free or at a reduced price and a ban on any gift designed to promote the sale of infant formula¹³.

The content of informational and educational material, whether written or audio-visual, dealing with the feeding of infants and young children is closely prescribed¹⁴. Educational and informational materials and equipment may not be donated by a manufacturer or distributor of infant formula unless prescribed conditions are observed, including that the donation is made with the written authority of the Secretary of State¹⁵ and the equipment or materials are distributed only through the health care system¹⁶.

No person may export to a country other than the Isle of Man, any of the Channel Islands or a member state of the European Community, any infant formula or follow-on formula which does not comply with: (a) the requirements as to composition¹⁷; (b) the requirements of the Codex Standard for Infant Formula or the Codex Standard for Follow-up Formula established by the Codex Alimentarius; (c) the requirements as to labelling and presentation¹⁸; and (d) with the regulations governing lot-marking¹⁹. However these requirements do not apply to the extent that any of them are varied or dispensed with by provisions laid down by the importing country²⁰. No person may export to such a country any infant formula or follow-on formula which is not labelled in an appropriate language, or languages, and labelled in such a way as to avoid any risk of confusion between an infant formula and a follow-on formula²¹. No person may export to such a country any food, other than an infant formula, which is labelled or otherwise represented as capable of satisfying by itself the nutritional requirements of normal healthy infants during the first four to six months of life²².

If any person contravenes these provisions²³ he is guilty of an offence²⁴.

Each food authority²⁵ is required to enforce and execute these provisions in its area²⁶.

1 'Infant formula' means a food intended for particular nutritional use by infants under the age of 12 months in good health during the first four to six months of life and satisfying by itself the nutritional requirements of such infants: Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2).

2 See the Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77 (as amended), which implement EC Commission Directive 91/321 (OJ L175, 4.7.91, p 35) on infant formulae and follow-on formulae (as amended); and EC Council Directive 92/52 (OJ L179, 1.7.92, p 129) on infant formulae and follow-on formulae intended for export to third countries.

'Follow-on formula' means a food intended for particular nutritional use by infants in good health who are aged over four months and under 12 months, and constituting the principal liquid element in a progressively diversified diet: Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2).

3 Ibid reg 2.

4 Ie as laid down in ibid regs 8(1), (2), 10, 11, Schs 1, 2, 3 (reg 8(2) prospectively amended with effect from 1 July 2002 by SI 2000/1509).

5 Ie as laid down in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children Regulations 1997, SI 1997/2042, regs 8(3), 12, Sch 1 (reg 12 amended by SI 1997/451).

6 Ie as laid down in the Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, regs 13, 15 (reg 13 amended by SI 1997/451). These labelling requirements are additional to those in the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see 373 et seq ante. See in particular the requirements as to claims in relation to suitability for infants and young children: see PARA 407 ante.

7 Ie as laid down in the Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 16(1). 'Presentation' includes the shape, appearance or packaging of the product concerned, the way in which the product is arranged when it is exposed for sale and the setting in which the product is displayed with a view to sale, but does not include any form of labelling or advertising: reg 1(2).

8 See ibid reg 3, which requires compliance with the requirements laid down in regs 9(1), (2), 10, 11, Schs 1, 2 (manufacturing) (reg 9(2) prospectively amended with effect from 1 July 2002 by SI 2000/1509), Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, regs 9(3), 12 (as amended: see note 5 supra) (composition), regs 14, 14A, 15 (reg 14 amended and by reg 14A added by, SI 1997/451) (labelling) and the Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 16(2) (presentation).

9 'Advertisement' has the same meaning as in the Food Safety Act 1990 (see PARA 225 note 5 ante) except that it does not include any label or wrapper; and 'advertise' and 'advertising' are to be construed accordingly: Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2).

10 Ibid reg 17(1)(a).

11 Ibid reg 17(2).

12 Ibid regs 17(1)(b), 18.

13 Ibid regs 19, 20, 21(4).

14 Ibid regs 21(1), (2). Amongst other requirements, the superiority of breast feeding must be stated: see reg 21(1).

15 As to the Secretary of State see PARA 224 ante.

16 Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 21(3).

17 Ie the requirements of ibid regs 8-12 (as amended).

18 Ie the requirements referred to in ibid regs 13(1)(c)-(h) (as amended: see note 6 supra), (2), (3), 15, 16(1) (in relation to infant formula) (see reg 5(1)(a)), and regs 14(c)-(f), 15, 16(2) (in relation to follow-on formula) (see reg 6(1)(b)).

19 Ibid regs 5(1), 6(1) (both amended by SI 1997/451). See the Food (Lot Marking) Regulations 1996, SI 1996/1502; and PARAS 414-416 ante.

20 Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, regs 5(2), 6(2).

21 Ibid reg 7.

22 Ibid reg 5(3).

23 Ie ibid regs 2, 3 (as amended), 5 (as amended), 6 (as amended), 7, 17-21.

24 Ibid reg 22. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 22. As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: see the Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 23.

25 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 1(2) (definition substituted by SI 1997/451). As to food authorities see PARA 251 et seq ante.

26 Infant Formula and Follow-on Formula Regulations 1995, SI 1995/77, reg 22(2).

UPDATE

426 Infant formula and follow-on formula

TEXT AND NOTES--SI 1995/77 replaced: see now the Infant Formula and Follow-on Formula (England) Regulations 2007, SI 2007/3521 (amended by SI 2008/2445), and the Infant Formula and Follow-on Formula (Wales) Regulations 2007, SI 2007/3573 (amended by SI 2008/2602). See *R (on the application of Infant and Dietetic Foods Association Ltd) v Secretary of State for Health* [2008] All ER (D) 452 (Feb), DC.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/427.
Bread and flour.

427. Bread and flour.

Requirements are imposed as to the composition of flour¹ and bread² and the use of certain terms in relation to the sale or advertising of flour and bread³.

Flour derived from wheat and no other cereal, whether or not mixed with other flour, must be fortified with specified substances⁴, unless it is wholemeal flour, self-raising flour⁵ or wheat malt flour⁶. Wholemeal flour is required to have specified quantities of certain substances⁷ naturally present and other flours must have them added in the manner prescribed⁸. Manufacturers and importers of flours must comply with the regulations⁹ except in relation to flour for use in the manufacture of communion wafers, matzos, gluten, starch or concentrated preparation for use in the fortification of flour¹⁰. No person may use as an ingredient in the preparation of flour or bread any flour bleaching agent¹¹.

The word 'wholemeal' may not be used in the labelling or advertising of bread unless all the flour used as an ingredient is wholemeal, and the word 'wheat germ' may not be used unless the bread has an added processed wheat germ content of not less than 10 per cent of the dry matter of the bread, and no person may sell or advertise for sale any bread in contravention of this provision¹². The general rules on labelling apply to bread and flour¹³.

The regulations relating to bread and flour do not apply to any food which is not intended for sale for human consumption¹⁴. They also do not apply to: (1) any bread brought into Great Britain from an European Economic Area state in which it was lawfully produced and sold; (2) any flour brought into Great Britain from a member state in which it was lawfully produced and sold; (3) any bread or flour lawfully produced in another member state and brought into Great Britain from a member state in which it was lawfully sold; or (4) any bread or flour lawfully produced outside the European Community and brought into Great Britain from a member state in which it was in free circulation and lawfully sold¹⁵. In all these cases this is subject to the proviso that the bread or flour is suitably labelled to give the nature of the bread or flour¹⁶.

If any person contravenes these provisions¹⁷ he is guilty of an offence¹⁸. There is a defence to the effect that the food was intended for export to a country which has legislation analogous to the regulations and it complies with that legislation¹⁹.

Each food authority²⁰ is required to enforce and execute these provisions in its area²¹.

1 'Flour' means the product which is derived from, or separated during, the milling or grinding of cleaned cereal whether or not the cereal has been malted or subjected to any other process, and includes meal, but does not include other cereal products, such as separated cereal bran, separated cereal germ, semolina or grits: Bread and Flour Regulations 1998, SI 1998/141, reg 2(1).

2 'Bread' means a food of any size, shape or form which is usually known as bread, and consists of a dough made from flour and water, with or without other ingredients, which has been fermented by yeast or otherwise leavened and subsequently baked or partly baked, but does not include buns, bunloaves, chapatis, chollas, pitta bread, potato bread or bread specially prepared for coeliac sufferers: *ibid* reg 2(1).

3 See the Bread and Flour Regulations 1998, SI 1998/141 (as amended). These regulations are not harmonised throughout the European Union and consequently there are provisions to prevent interference with the free movement of goods: see the text to note 15 *infra*.

4 *Ibid* reg 4(1). The substances are specified in reg 4, Schs 1, 2.

5 This applies to self-raising flour which has a calcium content of not less than 0.2%: see *ibid* reg 4(2).

- 6 Ibid reg 4(2).
- 7 Ie certain substances specified in ibid Sch 1.
- 8 Ibid reg 4(3). As to the prescribed manner see Sch 1.
- 9 Ibid reg 4(4).
- 10 Ibid reg 4(5).
- 11 Ibid reg 5(1) (substituted by SI 1999/1136). Where a flour treatment agent has been used as an ingredient it must be indicated on the list of ingredients: Bread and Flour Regulations 1998, SI 1998/141, reg 5(3).
- 12 Ibid reg 6(1), (2). As to the penalty see note 18 infra. For the meaning of 'labelling' see PARA 375 note 3 ante; definition applied by reg 2(1). For the meaning of 'advertisement' see PARA 225 note 5 ante.
- 13 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.
- 14 Bread and Flour Regulations 1998, SI 1998/141, reg 3(1).
- 15 Ibid reg 3(2).
- 16 Ibid reg 3(2).
- 17 Ie ibid regs 4(4), 5 (as amended), 6(2).
- 18 Ibid reg 7(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: see the Bread and Flour Regulations 1998, SI 1998/141, reg 10.
- 19 Ibid reg 9.
- 20 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Bread and Flour Regulations 1998, SI 1998/141, reg 2(1). As to food authorities see PARA 251 et seq ante.
- 21 Ibid reg 8.

UPDATE

427 Bread and flour

TEXT AND NOTE 19--SI 1998/141 reg 9 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

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428. Cocoa and chocolate products.

There are provisions which reserve certain descriptions for use with prescribed cocoa¹ and chocolate products², impose labelling and advertising restrictions, and control the ingredients of such products³. The general rules on labelling⁴ do not apply to such products⁵.

No person may sell or consign or deliver pursuant to a sale any cocoa or chocolate product unless there is applied to it a true statement containing the appropriate reserved description⁶ and, in some cases, wording about the filling⁷. In many cases the statement must also include a declaration as to certain aspects of its composition, such as the minimum content of cocoa solids or the use of flavour⁸. There are provisions relating to legibility and layout of labels similar to those contained in the general labelling regulations⁹, and special provisions with regard to the labelling of instant chocolate and cocoa products otherwise than by retail¹⁰ and products for sale from vending machines¹¹.

No person may give or display with any food sold by him any label, ticket or notice, or publish or be a party to the publication of any advertisement for food, which bears or includes any reserved description or any word or descriptions substantially similar to it unless the food is one to which the reserved description applies, or it is clear that description relates only to an ingredient of that food, or it is clear that the food does not contain a cocoa or chocolate product¹².

The ingredients in cocoa and chocolate products are strictly controlled¹³. In addition, if certain indications or implications are given in labelling or advertising then further compositional standards must be met, for example if a liqueur filling is suggested, the filling must contain a minimum level of liqueur and if a natural flavouring is referred to then it must fulfil the requirements for a natural flavouring source¹⁴.

If any person contravenes or fails to comply with these provisions¹⁵ he is guilty of an offence¹⁶. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's legislation relevant to the alleged offence¹⁷.

Each food authority¹⁸ is required to enforce and execute these provisions in its area¹⁹.

1 'Cocoa product' means any food specified in the Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 2(1), Sch 1 Pt I col 2 as read with Sch 1 Pt I para 1, but does not include any product specially prepared for diabetics or to which a slimming claim is lawfully applied and which has been specially prepared in connection with that claim by the addition of any ingredient other than an edible substance: reg 2(1), Sch 1 Pt I.

2 'Chocolate product' means any food specified in *ibid* Sch 1 Pt II col 2 as read with Sch 1 Pt II paras 1, 2, 3, but does not include any product specially prepared for diabetics or to which a slimming claim is lawfully applied and which has been specially prepared in connection with that claim by the addition of any ingredient other than an edible substance: reg 2(1), Sch 1 Pt II.

3 See the Cocoa and Chocolate Products Regulations 1976, SI 1976/541 (as amended), which implement EC Council Directive 73/241 (OJ L228, 16.8.73, p 23) on the approximation of the laws of the member states relating to cocoa and chocolate products intended for human consumption (as amended).

4 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and *PARA 373 et seq ante*.

5 See *ibid* reg 4(2)(b); and *PARA 374 ante*.

6 'Reserved description' in relation to any product means a description referred to in relation to that product in the Cocoa and Chocolate Products Regulations 1976, SI 1976/541, Sch 1 Pt I col 1 or Sch 1 Pt II col 1: reg 2(1).

- 7 Ibid reg 5(1), (2).
- 8 See ibid reg 5 (amended by SI 1982/17).
- 9 Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 11. As to the general labelling requirements see PARAS 402-406 ante.
- 10 Ibid reg 12.
- 11 Ibid reg 13.
- 12 Ibid reg 4. There is an exception for certain products called 'choc ice', 'choc bar' and 'choc roll': see reg 4.
- 13 Ibid reg 15, Sch 2 (reg 15 amended by SI 1995/3187). Only cocoa beans which are sound, wholesome and in marketable condition may be used in cocoa or chocolate products: Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 14.
- 14 See ibid regs 6, 7, 8, 9 10 (reg 7 amended by SI 1996/1499).
- 15 Ie the provisions of the Cocoa and Chocolate Products Regulations 1976, SI 1976/541 (as amended).
- 16 Ibid reg 16(1) (amended by SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2000: Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 16(1). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: see the Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 2A (added by SI 1990/2486).
- 17 Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 23(a) (reg 23 added by SI 1991/1476). It is also a defence if the food was intended for export and was prepared and labelled for sale before 26 July 1991: Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 23(b) (as so added).
- 18 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: ibid reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.
- 19 Cocoa and Chocolate Products Regulations 1976, SI 1976/541, reg 16(2) (amended by SI 1990/2486).

UPDATE

428 Cocoa and chocolate products

TEXT AND NOTES--SI 1976/541 replaced by Cocoa and Chocolate Products (England) Regulations 2003, SI 2003/1659 (amended by SI 2005/2626); Cocoa and Chocolate Products (Wales) Regulations 2003, SI 2003/3037 (amended by SI 2005/3254).

NOTE 3--National legislation that requires products containing vegetable fats other than cocoa butter to be labelled as chocolate substitute has a negative connotation that is disproportionate to the aim of consumer protection: Case 14/00 *EC Commission v Italian Republic* (2003) Times, 21 January, ECJ.

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429. Coffee and coffee products.

There are provisions which reserve certain descriptions for use with coffee¹ and designated coffee products², impose labelling and advertising restrictions, and control the ingredients of such products³. The general rules on labelling⁴ apply to such products other than those ready for delivery to a catering establishment⁵.

No person may sell by retail or consign or deliver pursuant to a sale by retail any designated product in a container⁶ unless that container is correctly marked or labelled with: (1) the appropriate reserved description⁷; (2) in some cases, the word 'decaffeinated'; (3) wording about the use of sugar in processing; and (4) in the case of extract pastes and liquids, wording about coffee and chicory content⁸. For sale otherwise than by retail, the container must be marked with the reserved description of the product, the name or business name and address of the manufacturer or packer or of a seller established within the European Union and a lot marking⁹. There are special provisions for designated products sold from vending machines¹⁰.

No person may give or display with any food sold by him any label, ticket or notice, or apply to any food sold by him or publish or be a party to the publication of any advertisement for food, which bears or includes any reserved description or any word or descriptions substantially similar to it unless the food is one to which the reserved description applies, or it is clear that the substance to which it relates is only an ingredient of that food to which the reserved description relates or it is clear that the food does not contain a designated product¹¹.

Only certain permitted added ingredients may be added to any designated product¹². No person may use as an ingredient in the preparation of any designated product any raw material which is not sound, wholesome and in marketable condition¹³.

If any person contravenes or fails to comply with these provisions¹⁴ he is guilty of an offence¹⁵. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence¹⁶.

Each food authority¹⁷ is required to enforce and execute these provisions in its area¹⁸.

1 'Coffee' means the dried seed of the coffee plant whether or not such seed has been roasted or ground or both roasted and ground: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 2(1).

2 'Designated product' means the foods specified in *ibid* reg 2(1), Sch 1 Pt I col 2, Pt II col 2, Pt III col 2 or Pt IV col 2 (Sch 1 Pts I-IV substituted by SI 1987/1986), such as coffee, chicory and instant coffee products, but do not include any product which contains such a food as an ingredient and which is sold, consigned or delivered as a compound product: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 2(1).

3 See the Coffee and Coffee Products Regulations 1978, SI 1978/1420 (as amended), which implement EC Council Directive 77/436 (OJ L172, 12.7.77, p 20) on the approximation of the laws of the member states relating to coffee extracts and chicory extracts (as amended).

4 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and *PARA 373 et seq ante*.

5 See *ibid* reg 4(2)(e); and *PARA 374 ante*.

6 'Container' includes any form of packaging of food for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article, and in particular includes a wrapper or confining band: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 2(1).

7 'Reserved description' as respects any designated product means any description specified in relation to that product in ibid Sch 1 Pt I col 1, Pt II col 1, Pt III col 1 or Pt IV col 1 (as substituted: see note 2 supra): reg 2(1).

8 Ibid reg 5 (substituted by SI 1987/1986; and amended by SI 1996/1499). See also the Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 5, Sch 2. The provisions of the Food Labelling Regulations 1996, SI 1996/1499, regs 35-38 (as amended) (see PARAS 402-405 ante) as to the method of marking apply to the particulars with which a designated product is required to be marked or labelled by the Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 5 (as substituted and amended): reg 6 (substituted by SI 1987/1986; and amended by SI 1996/1499).

9 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 5A (added by SI 1987/1986; and amended by SI 1995/3187).

10 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 9.

11 Ibid reg 4 (amended by SI 1982/254).

12 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 8 (amended by SI 1995/3187).

13 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 7.

14 Ie the provisions of the Coffee and Coffee Products Regulations 1978, SI 1978/1420 (as amended).

15 Ibid reg 10(1) (amended by SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is punishable on summary conviction by a fine not exceeding £2,000: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 10(1). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 2A (added by SI 1990/2486).

16 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 17(a) (reg 17 added by SI 1991/1476). It is also a defence for the person charged to prove that the food was intended for export and was prepared and labelled for sale before 26 July 1991: Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 17(b) (as so added).

17 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: ibid reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

18 Coffee and Coffee Products Regulations 1978, SI 1978/1420, reg 10(2) (amended by SI 1990/2486).

UPDATE

429 Coffee and coffee products

TEXT AND NOTES--Replaced.

New regulations¹ apply to coffee extracts² and chicory extracts³ which are ready for delivery to the ultimate consumer⁴ or to a catering establishment⁵.

No person may give with any food sold by him, or display with any food offered or exposed by him for sale or in his possession for the purpose of sale, a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description⁶ or any derivative of it or any word or description substantially similar to it unless such food is the designated product to which the reserved description relates, or such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food, or such description, derivative or word is used

in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product⁷.

No person may sell⁸ any designated product unless it is marked or labelled with (1) a reserved description of the product which must be the name prescribed by law⁹ for that product; (2) in some cases, the word 'decaffeinated'; (3) wording about the use of sugar in processing; and (4) in the case of extract pastes and liquids, wording about coffee and chicory content¹⁰.

If any person contravenes or fails to comply with any of the provisions above he is guilty of an offence¹¹.

Each food authority¹² must enforce and execute in its area the provisions above¹³.

Corresponding provision applying to coffee and chicory extracts has been made in relation to Wales¹⁴.

1 Ie the Coffee Extracts and Chicory Extracts (England) Regulations 2000, SI 2000/3323 (amended by SI 2005/2626).

2 'Coffee extracts' means the concentrated product obtained by extraction from roasted coffee beans using only water as the medium of extraction, excluding any process of hydrolysis involving the addition of an acid or a base, and which contains only the soluble and aromatic constituents of coffee, apart from those insoluble substances which it is impossible to remove and insoluble oils derived from coffee: *ibid* reg 2(1). The methods used to determine the free and soluble carbohydrate content of coffee extracts must be in conformity with EEC Council Directive 85/591 Annex paras 1, 2, concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs for human consumption, and must be validated or standardised: Coffee Extracts and Chicory Extracts (England) Regulations 2000, SI 2000/3323, reg 7(3).

3 'Chicory extracts' means the concentrated product obtained by extraction from roasted chicory using only water as the method of extraction, excluding any process of hydrolysis involving the addition of an acid or a base: *ibid* reg 2(1). 'Chicory' means the roots of *Cichorium intybus* L (other than the roots of plants used for the production of witloof chicory) which have been suitably cleaned, dried and roasted: reg 2(1).

4 'Ultimate consumer' means any person who buys otherwise than for the purpose of resale, for the purposes of a catering establishment, or for the purposes of a manufacturing business: *ibid* reg 2(3). 'Catering establishment' means a restaurant, canteen, club, public house, school, hospital or similar establishment, including a vehicle or a fixed or mobile stall, where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation, including manufacture and any form of processing or treatment: reg 2(3).

5 *Ibid* reg 3(1). For the meaning of 'catering establishment' see NOTE 4.

6 'Reserved description', as respects any designated product, means any description specified in relation to that product in *ibid* Schedule Pt I or II column 1 and the use of any such description is construed as meaning the designated product specified in relation to that description in Schedule Pt I or II column 2: reg 2(1).

7 *Ibid* reg 4.

8 'Sell' includes offer or expose for sale or have in possession for sale, and a 'sale' is to be construed accordingly: *ibid* reg 2(1).

9 Ie for the purposes of the Food Labelling Regulations 1996, SI 1996/1499, reg 6(1): see PARA 376.

10 Coffee Extracts and Chicory Extracts (England) Regulations 2000, SI 2000/3323, reg 5(1). The Food Labelling Regulations 1996, SI 1996/1499, regs 35 (see PARA 402), 36(1), (5) (see PARA 398) and 38 (see PARA 405) apply to the particulars with which a designated product is required to be marked or labelled as if they were particulars with which food is required to be marked or labelled by the Food Labelling Regulations 1996, SI 1996/1499: Coffee Extracts and Chicory Extracts (England) Regulations 2000, SI 2000/3323, reg 6.

11 Ibid reg 7(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 NOTE 18.

12 'Food authority' does not include the council of a district in a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change, or the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (see PARA 251 NOTE 2): Coffee Extracts and Chicory Extracts (England) Regulations 2000, SI 2000/3323, reg 2(1).

13 Ibid reg 7(2).

14 See the Coffee Extracts and Chicory Extracts (Wales) Regulations 2001, SI 2001/1440 (amended by SI 2005/3254).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/430. Eggs and egg products.

430. Eggs and egg products.

No person is permitted to sell for human consumption, or use in the preparation of food intended for sale for human consumption, any egg products¹ which are a mixture of egg products obtained from more than one species², or any egg products which do not comply with the requirements for the preparation of egg products³. Notwithstanding this prohibition, certain egg products⁴ may be used in the preparation of food intended for sale for human consumption if they are so used at the establishment where they were obtained, whether or not the food is consumed at that establishment, and they comply with the specified requirements⁵.

No person is permitted on or after 14 October 1993 to sell for human consumption, or use in the preparation of food intended for sale for human consumption, any egg products unless they were prepared in an approved establishment⁶.

Any person applying heat treatment to egg products must: (1) keep accurate records of the results of each test or process carried out by him⁷; (2) retain such records for a period of not less than two years from the date of the test or process to which the record relates⁸; and (3) produce such records on request to the appropriate food authority⁹.

Egg products may only be moved between approved establishments if the conditions relating to preparation, storage, transport and marking are complied with¹⁰.

Each food authority is responsible for the supervision of those establishments approved by it¹¹, and must in relation to an approved establishment take any supervision measures considered necessary to ensure that manufacturers of egg products comply with these provisions¹². Each food authority has a duty to enforce and execute the provisions relating to egg products in its area¹³.

If any person contravenes or fails to comply with the provisions relating to egg products¹⁴ he is guilty of an offence¹⁵.

The general rules on labelling¹⁶ do not apply to hens' eggs in so far as their labelling is regulated by European legislation¹⁷.

The law relating to the grading and marking of eggs, including prescriptions for the weight-grading of eggs and official marks and labels is dealt with elsewhere in this work¹⁸.

1 'Egg' means an egg laid by a hen, duck, goose, turkey, guinea fowl or quail; and 'egg products' means products obtained from eggs, their various components or mixtures of them, after removal of the shell and outer membranes, intended for human consumption, and includes such products when partially supplemented by other foodstuffs and additives and such products when liquid, concentrated, crystallised, frozen, quick-frozen, coagulated or dried, but does not include finished foodstuffs: Egg Products Regulations 1993, SI 1993/1520, reg 2(1).

2 Ibid reg 3(1), which is expressed to be subject to reg 3(4): see the text and notes 4-5 infra.

3 Ibid reg 3(2), which is expressed to be subject to reg 3(4): see the text and notes 4-5 infra. The requirements for the preparation of egg products are set out in reg 3, Sch 1 as read with Schs 2, 3, 4, 5, 6. Any egg products which have been prepared in another member state of the European Union do not have to comply with certain of the requirements: see reg 3(3).

4 I.e. egg products which are obtained: (1) from eggs of ducks, geese, turkeys, guinea fowl, quail or graded A under EC Council Regulation 1907/90 (OJ L173, 6.7.90, p 5) on certain marketing standards for eggs (as amended); or (2) from eggs containing no crack visible to the naked eye without candling and made into egg products at the farm where those eggs were produced: Egg Products Regulations 1993, SI 1993/1520, reg 3(4).

5 Ibid reg 3(4). The requirements are those specified in Sch 1 paras 1, 2(a), 3, 4.

6 Ibid reg 3(5). In the case of egg products prepared in Great Britain, an approved establishment is one which has been approved under reg 5 by the food authority and which complies with the appropriate requirements of Schs 1, 8 (amended by SI 1995/1763); and in the case of egg products from another part of the Economic Community, an approved establishment is one which has been approved in accordance with EC Council Directive 89/437 (OJ L212, 22.7.89, p 87) on hygiene and health problems affecting the production and the placing on the market of egg products, art 6 (as amended): Egg Products Regulations 1993, SI 1993/1520, reg 3(5). 'Food authority' means in relation to England and Wales: (1) as respects each district or London borough, the council of that district or borough; (2) as respects the City of London (including the Temples), the Common Council; (3) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer; and in relation to England and Wales includes a port health authority: reg 2(1). For the meaning of 'Great Britain' see PARA 206 note 1 ante. As to food authorities see PARA 251 et seq ante.

The food authority may revoke an approval granted under reg 5 in certain circumstances: see reg 6 (amended by SI 2000/656).

7 Egg Products Regulations 1993, SI 1993/1520, reg 4(a). The tests and processes are those specified in reg 4, Schs 2 or 3, or in Sch 4 Pts II, III, IV, V or VI.

8 Ibid reg 4(b).

9 Ibid reg 4(c).

10 See ibid reg 7. The conditions are contained in reg 7, Schs 1, 5, 6, 10 (amended by SI 1996/1499).

11 Egg Products Regulations 1993, SI 1993/1520, reg 8(1).

12 Ibid reg 8(2).

13 Ibid reg 9(2).

14 Ie ibid reg 3(1)-(3), (5) (see the text to notes 2-3, 6 supra), reg 5(1) (see note 6 supra) or 7(1), (3), (4) (see heads (1)-(3) in the text).

15 Ibid reg 9(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale in the case of regs 3, 4(a)-(c) (see the text to note 8 supra), 5, 7, or on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both in the case of regs 3, 5, 7 and to a fine in the case of reg 4(a) (see head (1) in the text): reg 9(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Egg Products Regulations 1993, SI 1993/1520, reg 2(2). In addition, the Food Safety Act 1990 s 8(3) (which makes presumptions in the case of batches of food) (see PARA 283 ante), s 9 (inspection and seizure of suspected food) (see PARA 284 ante), s 34 (which relates to time limits for the commencement of prosecutions) (see PARA 459 post) apply to the Egg Products Regulations 1993, SI 1993/1520 (as amended): reg 2(3)-(5).

16 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

17 See ibid reg 4(2)(f); and PARA 374 ante.

18 See AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARAS 1120-1121.

UPDATE

430 Eggs and egg products

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement

and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 1-15--SI 1993/1520 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

NOTE 4--Head (1). EC Council Regulation 1907/90 repealed and replaced from 1 July 2007 by EC Council Regulation 1028/2006 (OJ L186 7.7.2006 p 1) on marketing standards for eggs. For detailed rules implementing Regulation 1028/2006, see EC Commission Regulation 557/2007 (OJ L132, 24.5.2007, p 5) (as amended).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/431. Fish.

431. Fish.

The names to be used for the sale of fish are prescribed by regulations¹. Spreadable fish products are governed by the provisions relating to meat products and spreadable fish products². The general rules on labelling³ do not apply to preserved sardines or to preserved tuna and bonito in so far as their labelling is regulated by European legislation⁴.

1 See the Food Labelling Regulations 1996, SI 1996/1499, regs 5, 6, Sch 1; and PARAS 375-376 ante.

2 See the Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566 (as amended); and PARA 437 post.

3 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

4 See *ibid* reg 4(2)(m), (n); and PARA 374 ante.

UPDATE

431 Fish

TEXT AND NOTE 2--SI 1984/1566 revoked: SI 2003/2075 (England), SI 2004/1396 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/432.
Fresh fruit and vegetables.

432. Fresh fruit and vegetables.

The European Union grading standards in respect of fresh fruit and vegetables at all stages of distribution operate in England in Wales¹. The general rules on labelling² do not apply to fresh fruit and vegetables in so far as their labelling is regulated by European legislation³.

1 See the Agriculture and Horticulture Act 1964 Pt III (ss 11-24) (as amended); the Contaminants in Food Regulations 1997, SI 1997/1499 (as amended) (see PARA 319 ante); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1147 et seq.

2 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

3 See *ibid* reg 4(2)(l); and PARA 374 ante.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/433. Fruit juices and fruit nectars.

433. Fruit juices and fruit nectars.

There are provisions which reserve certain descriptions for use with fruit juices¹ and fruit nectars², impose labelling and advertising restrictions and control the ingredients of such products³. The general rules on labelling⁴ apply to such products⁵.

The name used as the name of the food in the labelling of any fruit juice, concentrated fruit juice⁶, dried fruit juice⁷, or fruit nectar must be 'juice', 'concentrated juice', 'dried' (or 'powdered' or 'freeze-dried') 'juice' or 'nectar' accompanied in each case by an indication of the fruit or fruits concerned⁸. Certain extra information must be given on labels in certain cases, for example if the juice has been sweetened or has been made from concentrated fruit juice⁹. The general labelling rules relating to legibility and layout of labels¹⁰ apply to these labelling requirements¹¹. A name that is prescribed for a fruit juice, concentrated fruit juice, dried fruit juice or nectar may not be used for labelling or advertising any food other than the one for which it is prescribed, whether or not it is qualified by other words, and similarly a prescribed name must not be used in the labelling or advertising of any food in such a way as to suggest that it is an ingredient in another food unless it is such an ingredient¹².

The added ingredients which may be contained in fruit juices, concentrated fruit juices, dried fruit juices and fruit nectars are controlled¹³. The degree of concentration of concentrated fruit juice is also prescribed¹⁴. No process involving the application of direct heat may be used in the preparation of concentrated or dried fruit juice¹⁵. Only the endocarp may be used in the preparation of citrus fruit juices¹⁶.

If any person contravenes or fails to comply with these provisions¹⁷ he is guilty of an offence¹⁸. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's legislation relevant to the alleged offence¹⁹.

Each food authority²⁰ is required to enforce and execute these provisions in its area²¹.

1 'Fruit juice' means: (1) the food consisting of fermentable but unfermented juice which (a) is obtained from fruit by mechanical processes and has the characteristic colour, aroma and flavour of juice of the fruit from which it is obtained, (b) is obtained from concentrated fruit juice by the addition of water and has the organoleptic and analytical characteristics of fruit juice obtained from fruit of the same kind by mechanical processes, or (c) is obtained from fruit other than apricots, citrus fruits, grapes, peaches, pears or pineapples by diffusion processes and is intended to be used in the preparation of concentrated fruit juice; (2) fruit purée where the nature of the fruit from which the juice is to be obtained is such that it is impossible to extract the juice without the pulp: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2(1) (definition substituted by SI 1991/1284). 'Fruit' means fruit, of a suitable degree of ripeness, fresh or preserved by chilling, sound, free from deterioration and containing all the essential constituents needed for the production of juices and nectars, but does not include rhubarb or tomatoes: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2(1).

2 'Fruit nectar' means the food consisting of the fermentable but unfermented product which is obtained by the addition of water and sugar to fruit juice, concentrated fruit juice, fruit purée, concentrated fruit purée or an admixture of these products and which contains the specified quantity of acid (if any): see *ibid* reg 2(1) (definition amended by SI 1982/1311; SI 1991/1284; and SI 1995/236). The quantity of acid is specified in the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2(1), Sch 1 (substituted by SI 1991/1284). The proportion of sugar or honey to the nectar is controlled: see the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2(1) (as so amended), Sch 1 (as so substituted).

3 See the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927 (as amended), which implement EC Council Directive 93/77 (OJ L244, 30.9.93, p 23) relating to fruit juices and certain similar products (as amended). There are certain exemptions for concentrated fruit juice prepared for infants and children and for

unfermented grape juice intended exclusively for sacramental use: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 3 (amended by SI 1991/1476; and SI 1992/2596).

4 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

5 See PARAS 373-412 ante.

6 'Concentrated fruit juice' means fruit juice which has been obtained from fruit by mechanical or diffusion processes and concentrated by the removal of part of its water, but does not include dried fruit juice: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2(1).

7 'Dried fruit juice' means fruit juice which has been concentrated to the form of powder, granule or solid by the removal of water: *ibid* reg 2(1).

8 *Ibid* reg 4 (substituted by SI 1982/1311; and amended by SI 1996/1499). If there is more than one fruit, they must be named in descending order of weight: see the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 4 (as so substituted and amended).

9 *Ibid* reg 7 (substituted by SI 1982/1311; and amended by SI 1991/1284 and SI 1996/1499).

10 *Ie* the Food Labelling Regulations 1996, SI 1996/1499, regs 35, 36, 38 (all as amended): see PARAS 402-406 ante.

11 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 8 (substituted by SI 1982/1311; and amended by SI 1996/1499).

12 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 5 (substituted by SI 1982/1311).

13 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 11 (amended by SI 1982/1311; SI 1991/1284; SI 1995/3187; and SI 1997/1413).

14 Concentrated fruit juice must be reduced in volume by at least 50%: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 8A (added by SI 1982/1311; and amended by SI 1991/1284).

15 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 10 (amended by SI 1982/1311).

16 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 9.

17 *Ie* the provisions of the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927 (as amended).

18 *Ibid* reg 12(1) (amended by the Food and Drugs (Amendment) Act 1982 s 6; and by SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 12(1) (as so amended). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 2A (added by SI 1990/2486).

19 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 20(a) (reg 20 added by SI 1991/1476). It is also a defence if the food was intended for export and was prepared and labelled for sale before 26 July 1991: Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 20(b) (as so added).

20 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: *ibid* reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

21 Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927, reg 12(2) (amended by SI 1990/2486).

UPDATE

433 Fruit juices and fruit nectars

TEXT AND NOTES--SI 1977/927 replaced: Fruit Juices and Fruit Nectars (England) Regulations 2003, SI 2003/1564 (amended by SI 2005/2626, SI 2009/3235, SI 2009/3238); Fruit Juices and Fruit Nectars (Wales) Regulations 2003, SI 2003/3041 (amended by SI 2005/3254, SI 2009/3378, SI 2009/3377).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/434. Honey.

434. Honey.

There are provisions which control the use of the word 'honey'¹, impose labelling and advertising restrictions and control the ingredients of honey products². The general rules on labelling³ do not apply to honey⁴.

No person may sell or consign or deliver pursuant to a sale any honey in a container unless there appears on it or attached to it a true statement using the description 'honey' preceded if appropriate by the word 'comb', 'chunk', 'baker's' or 'industrial'⁵. The statement must specify the name or trade name and the address or registered office of the producer or packer of the honey, or of a seller of the honey established in the European Community⁶. The manner of marking or labelling any container or honey is controlled⁷.

No person may label or display any ticket or notice with honey sold by him or publish or be a party to the publication of any advertisement for any honey which bears or includes a reference in words or pictures to the blossom or plant origin of the honey or to the regional, topographical or territorial origin of the honey unless it originated wholly from that blossom, plant, region, place or territory⁸.

No person may give or display with any food sold by him any label, ticket or notice, or publish or be a party to the publication of any advertisement for food, which bears or includes the word or description 'honey' or any word or descriptions substantially similar to that unless the food is honey which complies with the requirements as to composition, or it is clear that the substance to which it relates is only an ingredient or it is clear that the food is not, or does not contain, honey⁹.

No person may sell, consign or deliver honey which does not comply with the compositional requirements imposed for that kind of honey or which is not as far as practicable free from mould, insects, insect debris, brood or any foreign substance¹⁰. Nor may a person use as an ingredient in the preparation of food any honey which is not as far as practicable free from such substances¹¹. No person may add to honey intended for sale as such any substance other than honey, or sell, consign or deliver any such honey to which a substance has been added¹². Any honey which has an artificially changed acidity may not be sold, consigned or delivered¹³.

If any person contravenes or fails to comply with these provisions¹⁴ he is guilty of an offence¹⁵. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's legislation relevant to the alleged offence¹⁶.

Each food authority¹⁷ is required to enforce and execute these provisions in its area¹⁸.

1 'Honey' means the fluid, viscous or crystallised food which is produced by honeybees from the nectar of blossoms, or from secretions of, or found on, living parts of plants other than blossoms, which honeybees collect, transform, combine with substances of their own and store and leave to mature in honeycombs: Honey Regulations 1976, SI 1976/1832, reg 2(1).

2 See the Honey Regulations 1976, SI 1976/1832 (as amended), which implement EC Council Directive 74/409 (OJ L221, 12.8.74, p 10) on the harmonisation of the laws of the member states relating to honey (as amended).

3 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

4 See *ibid* reg 4(2)(c); and PARA 374 ante.

5 Honey Regulations 1976, SI 1976/1832, reg 7(1), (2). 'Comb honey' means honey stored by honeybees in the cells of freshly built broodless combs and intended to be sold in sealed whole combs or in parts of such combs; and 'chunk honey' means honey which contains at least one piece of comb honey; reg 2(1). The phrases 'baker's honey' and 'industrial honey' are to be applied to honey meeting the requirements set out in reg 7(3). The statement may be contained in a document accompanying the honey in the case of a sale otherwise then by retail: reg 7(5).

6 Ibid reg 7(4).

7 Ibid reg 9. This provision is similar to the requirements contained in the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARAS 402-406 ante.

8 Honey Regulations 1976, SI 1976/1832, reg 8.

9 Ibid reg 6.

10 Ibid reg 4(1), (2), (5), Sch 2.

11 Ibid reg 5.

12 Ibid reg 4(3), (4).

13 Ibid reg 4(6).

14 Ie the provisions of the Honey Regulations 1976, SI 1976/1832 (as amended).

15 Ibid reg 10(1) (amended by SI 1982/1727; SI 1985/67; and SI 1990/2486). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: Honey Regulations 1976, SI 1976/1832, reg 10(1) (as so amended). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Honey Regulations 1976, SI 1976/1832, reg 2A (added by SI 1990/2486).

16 Honey Regulations 1976, SI 1976/1832, reg 11(a) (reg 11 added by SI 1991/1476). It is also a defence to prove that the food was intended for export and was prepared and labelled for sale before 26 July 1991: Honey Regulations 1976, SI 1976/1832, reg 11(b) (as so added).

17 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: ibid reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

18 Honey Regulations 1976, SI 1976/1832, reg 10(2) (amended by SI 1990/2486).

UPDATE

434 Honey

TEXT AND NOTES--SI 1976/1832 replaced by Honey (England) Regulations 2003, SI 2003/2243 (amended by SI 2005/1920, SI 2005/2626); Honey (Wales) Regulations 2003, SI 2003/3044 (amended by SI 2005/3052, SI 2005/3254, SI 2008/543).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/435. Jams and similar products.

435. Jams and similar products.

There are provisions which reserve certain descriptions for use with jam products¹, impose labelling and advertising restrictions and control the ingredients of such products². The general rules on labelling apply to such products³.

For the purposes of the general rules on labelling⁴, the name used as the name of the food in the labelling of any jam product must be the name prescribed for that product⁵, with certain exceptions⁶. The name of the food must be accompanied by the name of any fruit or fruits from which it is prepared in descending order of weight⁷. Certain extra ingredients must also be declared⁸. The names 'conserve' and 'preserve' may only be used in the labelling or advertising of jam and extra jam⁹. For certain jam products, the proportion of fruit and sugar used and the words 'Keep in a cool place once opened' must be used in the same field of vision as the name of the food, the indication of net quantity and the appropriate durability indication¹⁰. The ingredients contained in jam products must be listed in the appropriate manner¹¹.

A name that is prescribed for a jam product may not be used in the labelling or advertising of any food as the name of the food, whether or not it is qualified by other words, unless it is a jam product for which the name is prescribed, and no person may use a prescribed name in the labelling or advertising of any food, in such a way as to suggest that it is an ingredient in another food unless it is indeed such an ingredient¹².

No person may use any fruit in the preparation of jam products unless it contains all its essential constituents and is sound, free from deterioration and sufficiently ripe for such use¹³. The treatments and additives and permitted sweetening agents and additional ingredients which are authorised for jam products are prescribed¹⁴.

If any person contravenes or fails to comply with these provisions¹⁵ he is guilty of an offence¹⁶. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's legislation relevant to the alleged offence¹⁷. In respect of certain jam products where it is alleged that the food is not properly labelled as to fruit or sugar content it is a defence that the requirements of the general labelling rules¹⁸ with regard to quantitative ingredient labelling were met¹⁹.

Each food authority²⁰ is required to enforce and execute these provisions in its area²¹.

1 This includes jams, jellies, marmalade, sweetened chestnut purée, curds, lemon cheese and mincemeat: see the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 2(2), Sch 1 (amended by SI 1990/2085; and SI 1995/3187). The foods for which these names are prescribed are set out in the Jam and Similar Products Regulations 1981, SI 1981/1063, Sch 1 (as so amended). For convenience, in this paragraph they are referred to as 'jam products', a phrase that is not used in the regulations.

2 See the Jam and Similar Products Regulations 1981, SI 1981/1063 (as amended), which implement EC Council Directive 79/693 (OJ L205, 13.8.79, p 5) on the approximation of the laws of the member states relating to fruit jams, jellies and marmalades and chestnut purée (as amended). The Jam and Similar Products Regulations 1981, SI 1981/1063 (as amended) do not apply to any food which is not intended for sale for human consumption, and there are certain other exemptions for particular jam products: see reg 3.

3 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

4 Ie the Food Labelling Regulations 1996, SI 1996/1499 (as amended).

5 Ie by the Jam and Similar Products Regulations 1981, SI 1981/1063, Sch 1 (as amended: see note 1 supra).

6 Ibid reg 5(1)-(3) (reg 5(1) amended by SI 1996/1499). The name used for extra jam may be 'jam' and for extra jelly may be 'jelly' and some marmalade may be named 'jelly marmalade': see the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 5(2), (3).

7 Ibid reg 5(4). Where three or more types of fruit are used, an alternative is to use the words 'mixed fruit' or to indicate the number of types of fruit used: see reg 5(4).

8 Ibid reg 5(5).

9 Ibid reg 6.

10 Ibid reg 8 (amended by SI 1982/1700; SI 1990/2085; SI 1995/3187; and SI 1996/1499), Jam and Similar Products Regulations 1981, SI 1981/1063, reg 9 (amended by SI 1996/1499). As to durability indications see PARAS 384-387 ante.

11 The Food Labelling Regulations 1996, SI 1996/1499, reg 14(1) (which makes provision as to the name used for an ingredient in a list of ingredients) (see PARA 378 ante) applies to jam products, in addition to other requirements relating to listing ingredients: see the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 7 (amended by SI 1996/1499), Jam and Similar Products Regulations 1981, SI 1981/1063, reg 7A (added by SI 1990/2085; and amended by SI 1996/1499).

12 Jam and Similar Products Regulations 1981, SI 1981/1063, reg 4. There are exceptions in relation to the terms 'jam' and 'jelly': see reg 4.

13 Ibid reg 11(1). Such fruit must also have been cleaned and trimmed and had any blemishes removed: reg 11(2). No fruit juice may be used in the preparation of any jam product which fails to comply with the requirements as to ingredients, processing and treatment in the Fruit Juices and Fruit Nectars Regulations 1977, SI 1977/927 (as amended) (see PARA 433 ante): Jam and Similar Products Regulations 1981, SI 1981/1063, reg 11(3) (substituted by SI 1990/2085). There are restrictions on the use of treated fruit or fruit extract in the preparation of jam products: see the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 11(4) (amended by SI 1990/2085). No person may sell a food which has been prepared in contravention of the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 11 (as amended): reg 11(6).

14 Ibid reg 12 (amended by SI 1990/2085; and SI 1995/3187), Jam and Similar Products Regulations 1981, SI 1981/1063, reg 13 (amended by SI 1988/2112), Jam and Similar Products Regulations 1981, SI 1981/1063, reg 14 (amended by SI 1995/3187).

15 Ie the provisions of the Jam and Similar Products Regulations 1981, SI 1981/1063 (as amended).

16 Ibid reg 16(1) (amended by SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: see the Jam and Similar Products Regulations 1981, SI 1981/1063, reg 16(1) (as so amended). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Jam and Similar Products Regulations 1981, SI 1981/1063, reg 2A (added by SI 1990/2486).

17 Jam and Similar Products Regulations 1981, SI 1981/1063, reg 22(a) (reg 22 added by SI 1991/1476). It is also a defence for the person charged to prove that the food was intended for export and was prepared and labelled for sale before 26 July 1991: Jam and Similar Products Regulations 1981, SI 1981/1063, reg 22(b) (as so added).

18 Ie the requirements of the Food Labelling Regulations 1996, SI 1996/1499, reg 19 (as substituted and amended): see PARA 383 ante.

19 Jam and Similar Products Regulations 1981, SI 1981/1063, reg 23 (added by SI 1998/1398).

20 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: Jam and Similar Products Regulations 1981, SI 1981/1063, reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

21 Ibid reg 16(2) (amended by SI 1990/2486)

UPDATE

435 Jams and similar products

TEXT AND NOTES--SI 1981/1063 replaced: Jam and Similar Products (England) Regulations 2003, SI 2003/3120 (amended by SI 2005/2626, SI 2009/3238); Jam and Similar Products (Wales) Regulations 2004, SI 2004/553 (amended by SI 2005/3254, SI 2009/3378).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/436. Meat.

436. Meat.

The Meat and Livestock Commission¹ may compile and operate systems of classifying meat² and of marking and labelling³ it in accordance with the classification⁴. It may also compile standard codes of practice for the way in which meat is cut for sale by retail and for the way in which the cuts are described⁵.

The Commission may submit to the Minister of Agriculture, Fisheries and Food⁶ or, in respect of Wales, to the National Assembly for Wales⁷ schemes for requiring information to be given as to retail meat prices and for regulating the way in which that information is given⁸. In particular price lists, prices and weights of particular pieces of meat and the price according to weight may be required to be displayed; and the way in which meat is described may be regulated so as not to mislead⁹. A scheme may include provisions rendering persons not complying with the scheme liable on summary conviction to a fine¹⁰.

1 As to the Meat and Livestock Commission see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1058 et seq.

2 'Meat' means: (1) carcase meat and offal obtained from livestock and intended for human consumption; and (2) bacon and ham: Agriculture Act 1967 s 25(2). 'Livestock' means cattle, sheep and pigs: s 25(2).

3 References to labelling meat include references to labelling it by means of any mark, label, tag or ticket made on, attached to or displayed with the meat: *ibid* s 7(3) (amended by the Food Safety Act 1990 s 59(1), (4), Sch 3 para 3, Sch 5).

4 Agriculture Act 1967 s 7(1)(a), (2).

5 *Ibid* s 7(1)(b).

6 As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 Agriculture Act 1967 s 8(1). If approved, the scheme may be brought into force by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 8(6).

9 See *ibid* s 8(2). As to variation and revocation of a scheme and supplemental provisions, see s 8(3), (7) (s 8(3) amended by the Weights and Measures Act 1985 s 97, Sch 12 para 2). As to the requirements relating to the sale of meat by weight see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 131.

10 Any person guilty of such an offence is guilty on summary conviction to a fine not exceeding level 2 on the standard scale: Agriculture Act 1967 s 8(4), (5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

UPDATE

436 Meat

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

For the enforcement of beef labelling schemes established under various Community instruments see Beef and Veal Labelling Regulations 2010, SI 2010/983 (England); and Beef Labelling (Enforcement) (Wales) Regulations 2001, SI 2001/1360.

NOTE 7--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/437. Meat products and spreadable fish products.

437. Meat products and spreadable fish products.

There are provisions which reserve certain descriptions for use with meat products¹ and spreadable fish products², impose labelling and advertising restrictions and control the ingredients of such products³. The general rules on labelling apply to these products⁴.

There are no prescribed names for meat and spreadable fish products, but certain names may only be used for specified foods which must comply with the appropriate requirements⁵. A name that is specified for such a product may not be used in the labelling or advertising of a meat product or a spreadable fish product as the name of the food, whether or not it is qualified by other words, unless it is the food for which the name is reserved, and a specified name may not be used in the labelling or advertising of any food, whether or not qualified by other words, in such a way as to suggest that the product is an ingredient of the food unless it is indeed such an ingredient and it complies with the appropriate requirements⁶.

Where any person sells any meat product which has the appearance of a cut, joint, slice, portion or carcase of raw meat, cooked meat or cured meat then the name used as the name of the food for the purposes of the general labelling rules⁷ must include an indication of the ingredients used in the preparation of the product⁸. Any food with such an appearance which does not bear an indication of ingredients but contains added water must be marked or labelled with a declaration as to added water⁹ which must appear in the name of the food or in immediate proximity to it¹⁰, save that if the product is not prepacked or is prepacked for direct sale the declaration may appear on a ticket or notice displayed in immediate proximity to the food or on a label attached to the food¹¹.

Every meat product and spreadable fish product other than a corned meat product must bear a declaration as to the meat content or fish content¹². If the product is not prepacked or is prepacked for direct sale the declarations may appear on a ticket or notice displayed in immediate proximity to the food or on a label attached to the food¹³. If the product is required by the general labelling rules to be marked or labelled with a list of ingredients, these declarations must appear in, or immediate proximity to, the list of ingredients¹⁴. The method of calculation of such contents is prescribed¹⁵.

No person may sell a meat product, unless it has a certain lean meat content¹⁶. No person may sell an uncooked meat product in the preparation of which any specified part of the carcase has been used other than as a sausage skin¹⁷.

If any person contravenes or fails to comply with these provisions¹⁸ he is guilty of an offence¹⁹. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's legislation relevant to the alleged offence²⁰.

Each food authority²¹ is required to enforce and execute these provisions in its area²², and each port health authority must enforce and execute these provisions in its district in relation to imported food²³.

1 'Meat' means the flesh, including fat, and the skin, rind, gristle and sinew in amounts naturally associated with the flesh used, of any animal or bird which is normally used for human consumption, and includes any specified part of the carcase which is obtained from such an animal or bird but does not include any other part of the carcase: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 2(1). The parts of the carcase are specified in reg 2(1), Sch 2 Pt I. 'Meat product' means any food which consists of meat or of which meat is an ingredient, other than a food specified in reg 2(1), Sch 3: reg 2(1).

- 2 'Fish' means the edible portion of any fish, including edible molluscs and crustacea: *ibid* reg 2(1). 'Spreadable fish product' means: (1) any product of which fish is an ingredient and in the labelling or advertising of which the name 'paste', 'pâté' or 'spread' is used as part of the name of the food; or (2) any other readily spreadable product of which fish is an ingredient, but does not include any product that contains fish oil but no other constituent of fish: reg 2(1).
- 3 See the Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566 (as amended). The regulations do not apply to any food which is not intended for sale for human consumption, or to food which is intended exclusively for consumption by babies or young children and is marked or labelled as such: reg 3 (amended by SI 1991/1476; and SI 1992/2596).
- 4 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 *et seq* ante.
- 5 See the Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 4, Sch 4 (reg 4 amended by SI 1996/1499).
- 6 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 4 (as amended: see note 5 *supra*).
- 7 See note 4 *supra*.
- 8 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 5 (amended by SI 1995/3187; and SI 1996/1499). Certain ingredients (such as water, seasoning and curing salt) are exempted from this provision: see the Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 5 (as so amended). As to the ingredients of cured meat see reg 5, Sch 1 (amended by SI 1995/3187).
- 9 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 9 (amended by SI 1986/987).
- 10 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 10(3) (amended by SI 1986/987).
- 11 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 10(1) (amended by SI 1996/1499).
- 12 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 7 (amended by SI 1986/987). A declaration of corned meat content must be made: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 8 (amended by SI 1986/987).
- 13 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 10(1) (as amended: see note 11 *supra*).
- 14 *Ibid* reg 10(2), (2A) (reg 10(2) substituted by, and reg 10(2A) added by, SI 1986/987; Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 10(2) (as substituted) amended by SI 1996/1499).
- 15 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, regs 12, 13. Any fat which may not be taken into account in that calculation must be identified separately in the list of ingredients: reg 6 (amended by SI 1986/987; and SI 1996/1499).
- 16 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 11 (amended by SI 1996/1499).
- 17 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 14, Sch 2 Pt II.
- 18 *Ie* the provisions of the Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566 (as amended).
- 19 Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 15(1) (amended by SI 1985/67; and by virtue of the Criminal Justice Act 1988 s 52). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 2A (added by SI 1990/2486).

20 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 22(a) (reg 22 added by SI 1991/1476). It is also a defence to prove that the food was intended for export and was prepared and labelled for sale before 26 July 1991: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 22(b) (as so added). In any proceedings for an offence in contravention of regs 7, 8, 10, in so far as that provision conflicts with the Food Labelling Regulations, SI 1996/1499, reg 19 (as substituted and amended) (see PARA 383 ante) (indications of quantities of certain ingredients or categories of ingredients), it is a defence to prove that the requirements of reg 19 (as substituted and amended) were met: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 23 (added by SI 1998/1398).

21 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

22 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 15(2) (amended by SI 1990/2486).

23 Meat Products and Spreadable Fish Products Regulations 1984, SI 1984/1566, reg 15(3).

UPDATE

437 Meat products [...]

TEXT AND NOTES--SI 1984/1566 revoked and replaced in part: Meat Products (England) Regulations 2003, SI 2003/2075 (amended by SI 2009/3238), Meat Products (Wales) Regulations 2004, SI 2004/1396 (amended by SI 2008/437, SI 2009/3378).

NOTE 1--'Meat' now has the meaning assigned to it by European Parliament and Council Directive 2000/13 relating to the labelling, presentation and advertising of foodstuffs, as amended by EC Commission Directive 2001/101: SI 2003/2075 reg 2 (England); SI 2004/1396 reg 2 (Wales). 'Meat product' now means any food other than one specified in SI 2003/2075 Sch 1 (England) or SI 2004/1396 Sch 1 (Wales) which consists of meat or which contains as an ingredient or as ingredients any meat, mechanically recovered meat, or from any mammalian or bird species recognised as fit for human consumption, heart, tongue, the muscles of the head (other than masseters), the carpus, the tarsus, or the tail.: SI 2003/2075 reg 2 (England); SI 2004/1396 reg 2 (Wales).

NOTE 3--Now SI 2003/2075 reg 3 (England), SI 2004/1396 reg 3 (Wales).

NOTES 5, 6, 7--Now SI 2003/2075 reg 4, Sch 2 (England), SI 2004/1396 reg 4, Sch 2 (Wales).

NOTE 8--Now SI 2003/2075 reg 5 (England); SI 2004/1396 reg 5 (England).

NOTE 9--Now SI 2003/2075 reg 5(2)(b) (England) (amended by SI 2008/517), SI 2004/1396 reg 5(2)(b) (Wales) (substituted by SI 2008/713).

TEXT AND NOTES 10-16--These provisions are not reproduced in SI 2003/2075 or SI 2004/1396. As to the declaration as to ingredients required in relation to certain meat products see now SI 1996/1499 reg 23(2); and PARA 390.

NOTE 17--Now SI 2003/2075 reg 6 (England), SI 2004/1396 reg 6 (Wales).

NOTE 18--Now SI 2003/2075 (England) or SI 2004/1396 (Wales).

NOTE 19--Now SI 2003/2075 reg 7(1) (England); SI 2004/1396 reg 7(1) (Wales).

NOTE 20--Now SI 2003/2075 reg 10 (England) (amended by SI 2005/2626); SI 2004/1396 reg 10 (Wales) (amended by SI 2005/3254).

NOTE 21--Definition not reproduced in SI 2003/2075 or SI 2004/1396.

NOTE 22--Now SI 2003/2075 reg 7(2) (England), SI 2004/1396 reg 7(2) (Wales).

NOTE 23--Now SI 2003/2075 reg 7(3) (England), SI 2004/1396 reg 7(3) (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/438. Poultry.

438. Poultry.

The water content of poultry carcasses¹ is controlled by regulations². Authorised officers have power to conduct certain tests and checks to ensure compliance with the requirements³. The procedures for analysis of samples are prescribed⁴. Every poultry carcase is required to be marked to identify the slaughterhouse from which it originates⁵. Any person who contravenes the provisions relating to poultry carcasses⁶ is guilty of an offence⁷. Any person who wilfully obstructs an authorised officer is guilty of an offence⁸.

Each food authority⁹ or port health authority is required to enforce and execute these provisions in its area or district¹⁰.

1 'Poultry carcasses' means frozen or deep-frozen whole eviscerated carcasses of chickens, hens or cocks, with or without edible offal: Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 2.

2 See the Poultry Meat (Water Content) Regulations 1984, SI 1984/1145 (as amended), which implemented EC Council Regulation 2967/76 (OJ L339, 8.12.76, p 1) laying down common standards for the water content of frozen and deep-frozen chickens, hens and cocks (repealed); and EC Commission Regulation 2785/80 (OJ L288, 31.10.80, p 13) introducing detailed rules for the application of EC Regulation 2967/76 (repealed). See now EC Council Regulation 1906/90 (OJ L173, 6.7.90, p 1) on certain marketing standards for poultry (as amended).

3 Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 4 (amended by SI 1990/2486). Imported carcasses may also be inspected: see the Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 6.

4 Ibid regs 8-10 (reg 8 amended by SI 1990/2486). In certain circumstances notices are required to be served and there are provisions governing service: Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, regs 16, 17.

5 Ibid reg 5. As to slaughterhouses see PARA 470 et seq post.

6 I.e. the provisions of ibid reg 5 and EC Council Regulation 2967/76 (OJ L339, 8.12.76, p 1), art 1 (repealed) (which permits the marketing of poultry carcasses only if the water content does not exceed a prescribed limit), art 2 (repealed) (which requires slaughterhouses to carry out regular checks), and EC Commission Regulation 2785/80 (OJ L288, 31.10.80, p 13), art 2 (repealed) (which contains requirements relating to poultry carcasses deemed not to comply with the Regulation), art 4 (repealed) (which contains requirements as to marking or labelling): Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, regs 2(1), 11(1), (2), Schedule (reg 11(1) amended by virtue of the Criminal Justice Act 1988 s 52).

7 Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 11(1), (2) (as amended: see note 6 supra). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 11(1), (2) (as so amended). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 2A (added by SI 1990/2486).

8 Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 11(3) (amended by virtue of the Criminal Justice Act 1988 s 52). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 11(3) (as so amended).

9 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: ibid reg 2 (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

- 10 Poultry Meat (Water Content) Regulations 1984, SI 1984/1145, reg 3 (amended by SI 1990/2486).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/439.
Drinking milk.

439. Drinking milk.

Only milk complying with the requirements laid down for drinking milk may be delivered or sold without processing to the final consumer either directly or through the intermediary of restaurants, hospitals, canteens or similar mass caterers¹. The permitted sales descriptions for drinking milk and the composition and processing of each such description is controlled by regulations². The extent to which milk may be modified to meet fat content standards, and be enriched with milk proteins, mineral salts or vitamins or have the lactose content reduced is also controlled by regulations³.

No person may sell or deliver milk, or use or omit a specified sales description for any product or import as drinking milk any product not complying with the above provisions⁴. If any person contravenes or fails to comply with these provisions he is guilty of an offence⁵. It is a defence for the person charged to prove that the food was intended for export to a country which has analogous legislation and the product complied with that legislation⁶. The general labelling rules also apply to milk⁷.

Each food authority⁸ is required to enforce and execute these provisions in its area⁹.

1 EC Council Regulation 2597/97 (OJ L351, 23.12.97, p 13) laying down additional rules on the common organisation of the market in milk and milk products for drinking milk, art 2. EC Council Regulation 2597/97 (OJ L351, 23.12.97, p 13) (as amended) is implemented in England and Wales by the Drinking Milk Regulations 1998, SI 1998/2424.

As to the power to make regulations relating to the special designation of milk see the Food Safety Act 1990 s 18(2) (amended by the Food Standards Act 1999 s 40(1), Sch 5 para 13).

2 EC Council Regulation 2597/97 (OJ L351, 23.12.97, p 13) art 3.1.

3 Ibid art 3.2.

4 Drinking Milk Regulations 1998, SI 1998/2424, regs 3, 4.

5 Ibid reg 6. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 6. As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Drinking Milk Regulations 1998, SI 1998/2424, reg 8.

6 Ibid reg 7(a). In the case of export to another member state of the European Union, that legislation must comply with EC Council Regulation 2597/97 (OJ L351, 23.12.97, p 13) (as amended): Drinking Milk Regulations 1998, SI 1998/2424, reg 7(b).

7 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

8 'Food authority' does not include the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1) (c) (which deals with the Inner Temple and the Middle Temple) (see PARA 251 ante): Drinking Milk Regulations 1998, SI 1998/2424, reg 2. As to food authorities see PARA 251 et seq ante.

9 Ibid reg 5(1). Each food authority must give such assistance and information to any other food authority as that other food authority may reasonably require for the purpose of carrying out its duties under the Drinking Milk Regulations 1998, SI 1998/2424: reg 5(2).

UPDATE

439 Drinking milk

TEXT AND NOTES--SI 1998/2424 replaced in relation to England: Drinking Milk (England) Regulations 2008, SI 2008/1317.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 6--SI 1998/2424 reg 7 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/440. Milk and milk products.

440. Milk and milk products.

Certain names, which include 'milk', 'cream', 'butter', 'cheese' and 'yoghurt', may only be used for products which comply with the specified requirements, unless the exact nature of the product is clear from traditional usage or when the designation is clearly used to describe a characteristic quality of the product¹. If any person contravenes the provision on the protection of designations used in marketing of milk and milk products² he is guilty of an offence³.

Each food authority⁴ is required to enforce and execute these provisions in its area⁵.

1 EC Council Regulation 1898/87 (OJ L182, 3.7.87, p 36) on the protection of designations used in marketing of milk and milk products, arts 2, 3. EC Council Regulation 1898/87 (OJ L182, 3.7.87, p 36) (as amended) is implemented in England and Wales by the Milk and Milk Products (Protection of Designations) Regulations 1990, SI 1990/607 (as amended). As to spreadable fats see also PARA 449 post.

2 ie EC Council Regulation 1898/87 (OJ L182, 3.7.87, p 36) art 3.

3 Milk and Milk Products (Protection of Designations) Regulations 1990, SI 1990/607, reg 2(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: reg 2(1). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Milk and Milk Products (Protection of Designations) Regulations 1990, SI 1990/607, reg 2A (added by SI 1990/2486).

4 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: Milk and Milk Products (Protection of Designations) Regulations 1990, SI 1990/607, reg 1A (added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

5 Milk and Milk Products (Protection of Designations) Regulations 1990, SI 1990/607, reg 2(2) (amended by SI 1990/2486).

UPDATE

440 Milk and milk products

TEXT AND NOTES--SI 1990/607 now replaced, in relation to England, by the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008, SI 2008/1287, and, in relation to Wales, by the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008, SI 2008/1341.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/441.
Condensed milk and dried milk.

441. Condensed milk and dried milk.

There are provisions which reserve certain descriptions for use with condensed milk¹ and dried milk products², impose labelling and advertising restrictions and control the ingredients and processing of such products³. The general rules on labelling⁴ apply to such products other than those ready for delivery to a catering establishment⁵.

No person may label or advertise any food which bears or includes any reserved description or similar description unless the food is a condensed milk product or dried milk product to which the reserved description relates, or it is clear that the substance to which it relates is only an ingredient of the food, or the description is used in such a context as to indicate that the food is not a condensed milk or dried milk product and does not contain one⁶.

Without prejudice to the general labelling rules, no person may sell by retail, or consign or deliver pursuant to a sale by retail any condensed milk product or dried milk product in a container unless that container is correctly marked or labelled with the appropriate reserved description and other specified wording⁷. For sale otherwise than by retail, the container must be marked with the reserved description of the product, the name or business name and address of the manufacturer or packer or of a seller established within the European Community and the date of manufacture or a lot marking⁸.

Only certain permitted ingredients may be added to condensed milk and dried milk products⁹. No person may use as an ingredient in the preparation of any condensed milk or dried product any milk which has not been subjected to heat treatment at least equivalent to pasteurisation unless the product is itself subjected to such heat treatment during its preparation¹⁰. No person may sell by retail, or consign or deliver pursuant to sale by retail any condensed milk or dried milk other than a condensed milk product or a dried milk product, complying with these provisions¹¹.

If any person contravenes or fails to comply with these provisions¹² he is guilty of an offence¹³. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence¹⁴.

Each food authority¹⁵ is required to enforce and execute these provisions in its area¹⁶.

1 'Condensed milk' means milk, partly skimmed milk or skimmed milk or any combination of those, whether with or without the addition of cream, dried milk or sucrose, which has been concentrated by the partial removal of water, but does not include dried milk (as to which see note 2 *infra*): Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 2(1). 'Condensed milk product' means any food specified in reg 2(1), Sch 1 Pt I col 2 (as substituted) but does not include any product which contains such a food as an ingredient and which is sold, consigned or delivered as a compound product: reg 2(1), Sch 1 Pt I (Sch 1 substituted by SI 1982/1066).

2 'Dried milk' means milk, partly skimmed milk or skimmed milk or any combination of those, whether with or without the addition of cream, which has been concentrated to the form of powder, granule or solid by the removal of water: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 2(1). 'Dried milk product' means any food specified in Sch 1 Pt II col 2 (as substituted), but does not include any product which contains such a food as an ingredient and which is sold, consigned or delivered as a compound product: reg 2(1), Sch 1 Pt II (as substituted: see note 1 *supra*).

3 See the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928 (as amended), which implement EC Council Directive 76/118 (OJ L24, 30.1.76, p 49) on the approximation of the laws of the member states relating to certain partly or wholly dehydrated preserved milk for human consumption (as amended). The Condensed Milk and Dried Milk Regulations 1977, SI 1977/928 (as amended) do not apply to condensed milk or dried milk specially prepared for infant feeding and labelled as such: reg 3 (amended by SI 1991/1476; and SI 1992/2596).

- 4 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.
- 5 See *ibid* reg 4(2)(d); and PARA 374 ante.
- 6 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 4.
- 7 *Ibid* reg 5(1) (reg 5 substituted by SI 1986/2299; Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 5(1) amended by SI 1995/3187; and SI 1996/1499). This provision is qualified in the case of some small packages: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 5(2) (as so substituted). The Food Labelling Regulations 1996, SI 1996/1499, regs 35, 38 (both as amended) (see PARAS 402, 405 ante) apply to the marking and labelling of condensed milk products and dried milk products: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 6(1) (reg 6 substituted by SI 1986/2299; and amended by SI 1996/1499). Any indication of minimum durability required by the Food Labelling Regulations 1996, SI 1996/1499, reg 20 (see PARA 385 ante) must appear in the same field of vision as the particulars required by the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 5 (as substituted and amended): reg 6(2) (as so substituted and amended).
- 8 *Ibid* reg 5A (added by SI 1986/2299; and amended by SI 1995/3187). The particulars which are required to be marked by the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 5A (as added and amended) must be in English and be clearly visible, easily legible and indelible and in some cases may be in a separate document: reg 6A (added by SI 1986/2299). As to lot marking see PARAS 414-416 ante.
- 9 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 9 (amended by SI 1995/3187). As to sampling for analysis of condensed milk and dried milk products see the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 9A (added by SI 1989/1959).
- 10 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 8 (amended by SI 1982/1066).
- 11 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 7.
- 12 *Ie* the provisions of the Condensed Milk and Dried Milk Regulations 1977, SI 1977/928 (as amended).
- 13 *Ibid* reg 10(1) (amended by the Food and Drugs (Amendment) Act 1982 s 6; SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 10(1) (as so amended). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 2A (added by SI 1990/2486).
- 14 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 18(a) (reg 18 added by SI 1991/1476). It is also a defence to prove that the food was intended for export and was prepared and labelled for sale before 26 July 1991: Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 18(b) (as so added).
- 15 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: *ibid* reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.
- 16 Condensed Milk and Dried Milk Regulations 1977, SI 1977/928, reg 10(2) (amended by SI 1990/2486).

UPDATE

441 Condensed milk and dried milk

TEXT AND NOTES--SI 1977/928 replaced by Condensed Milk and Dried Milk (England) Regulations 2003, SI 2003/1596 (amended by SI 2004/2145, SI 2005/2626, SI 2006/14 (amended by SI 2007/56), SI 2008/85, SI 2009/3238); Condensed Milk and Dried Milk (Wales) Regulations 2003, SI 2003/3053 (amended by SI 2004/2731, SI 2005/3254, SI 2006/31, SI 2008/137, SI 2009/3378).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/442.
Caseins and caseinates.

442. Caseins and caseinates.

Regulations¹ have been made in relation to caseins² and caseinates³ intended for human consumption⁴. They do not apply to caseins or caseinates intended for export⁵. In particular, the regulations: (1) prescribe reserved descriptions and composition and manufacturing characteristics for casein products⁶; (2) prohibit the labelling or advertisement with reserved descriptions of food⁷ other than casein products to which those descriptions relate⁸; (3) impose certain labelling requirements⁹; (4) require heat treatment before sale for casein products¹⁰; (5) make provision in relation to the sampling of casein products for analysis¹¹; and (6) make provision for enforcement and special defences¹².

1 le the Caseins and Caseinates Regulations 1985, SI 1985/2026 (as amended): see notes 2-12 *infra*.

2 'Casein' means the principal protein constituent of milk, washed and dried, insoluble in water and obtained from skimmed milk by precipitation by the addition of acid, or by microbial acidification, or by using rennet or by using other milk-coagulating enzymes, without prejudice to the possibility of prior use of ion exchange processes and concentration processes: *ibid* reg 2.

3 'Caseinate' means a product obtained by drying casein treated with neutralising agents: *ibid* reg 2.

4 See *ibid* reg 3 (amended by SI 1991/1476; SI 1992/2596). As to defences in relation to export see the Caseins and Caseinates Regulations 1985, SI 1985/2026, reg 11 (added by SI 1991/1476).

5 For the meaning of 'human consumption' see PARA 201 note 1 *ante*.

6 See the Caseins and Caseinates Regulations 1985, SI 1985/2026, regs 2, 2A (added by SI 1990/2486); and the Caseins and Caseinates Regulations 1985, SI 1985/2026, Schedule (amended by SI 1989/2321). 'Casein product' means edible acid casein, edible rennet casein or any edible caseinate: reg 2.

7 For the meaning of 'food' see PARA 201 *ante*.

8 See the Caseins and Caseinates Regulations 1985, SI 1985/2026, reg 4.

9 See *ibid* reg 5 (amended by SI 1996/1499).

10 See the Caseins and Caseinates Regulations 1985, SI 1985/2026, reg 6.

11 See *ibid* reg 6A (added by SI 1989/2321).

12 See the Caseins and Caseinates Regulations 1985, SI 1985/2026, reg 7 (amended by SI 1990/2486).

UPDATE

442 Caseins and caseinates

NOTE 4--SI 1985/2026 reg 11 amended: SI 2005/2626 (England), SI 2005/3254 (Wales).

NOTE 6--SI 1985/2026 Schedule further amended: SI 2009/3235 (England), SI 2009/3377 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/443. Olive oil.

443. Olive oil.

The names 'virgin olive oil', 'refined olive oil', 'olive oil', 'crude olive oil', 'crude olive-pomace oil', 'refined olive-pomace oil' and 'olive-pomace oil' may only be used for products which comply with specified requirements¹. In addition, only olive oil, olive-pomace oil, and two sub-categories of virgin olive oil may be marketed at the retail stage². There are specified methods of analysis for the purpose of enforcement³. An authorised officer has power to inspect and take samples of oil⁴.

The geographical origins may be indicated only in relation to virgin olive oil and extra virgin olive oil⁵. There are rules governing blends and requiring oils bearing such indications to be packaged only in approved establishments at which checks of origin must be carried out⁶.

If any person by selling any oil contravenes the provisions relating to descriptions and definitions of oil⁷, he is guilty of an offence⁸. If any person sells any olive oil in contravention of the provisions relating to designation of origin of olive oil⁹ he is guilty of an offence¹⁰. The general rules on labelling apply to olive oil¹¹.

These provisions must be enforced, in relation to imports by the relevant port health authority, at the retail stage by the relevant food authority¹², and at all other stages by the Minister of Agriculture, Fisheries and Food¹³.

1 See EC Council Regulation 136/66 (OJ 172, 30.9.66, p 3025/66) on the establishment of a common organisation of the market in oils and fats, art 35.1, Annex. EC Council Regulation 136/66 (OJ 172, 30.9.66, p 3025/66) (as amended) is implemented in England and Wales by the Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783 (as amended).

2 EC Council Regulation 136/66 (OJ 172, 30.9.66, p 3025/66) art 35.2, Annex. The sub-categories are 'extra virgin olive oil' and 'virgin olive oil' (as opposed to 'ordinary virgin olive oil' and 'lampante virgin olive oil'): art 35.2, Annex.

3 See EC Commission Regulation 2568/91 (OJ L248, 5.9.91, p 1) on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis (as amended).

4 Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 5(1); Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513, reg 6(1). Any person who intentionally obstructs an authorised officer is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 5(2) (amended by virtue of the Criminal Justice Act 1988 s 52); Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513, reg 6(1). Where an offence has been committed by a body corporate, in certain circumstances an officer of the corporation may also be deemed guilty of that offence: Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 6; Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513, reg 6(1).

5 EC Commission Regulation 2815/98 (OJ L349, 24.12.98, p 56) concerning marketing standards for olive oil, art 1. As to the permitted geographic origin see arts 1, 2. EC Commission Regulation 2815/98 (OJ L349, 24.12.98, p 56) (as amended) is implemented in England and Wales by the Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513. As to geographical origin see also *PARA 417 et seq ante*.

6 See EC Commission Regulation 2815/98 (OJ L349, 24.12.98, p 56) arts 3-5.

7 *Ie* EC Council Regulation 136/66 (OJ 172, 30.9.66, p 3025/66) art 35.1, 35.2.

8 Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 4 (amended by SI 1992/2590; SI 1998/2410; and by virtue of the Criminal Justice Act 1988 s 52). Any person guilty of such an offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale: Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 4 (as so amended). As to the standard scale see *PARA 242 note 18 ante*. There is a defence of due diligence: reg 4(5). The methods of analysis are prescribed: Olive Oil

(Marketing Standards) Regulations 1987, SI 1987/1783, reg 5A (added by SI 1992/2590; and amended by SI 1998/2410).

9 le EC Commission Regulation 2815/98 (OJ L349, 24.12.98. p 56) (as amended).

10 Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513, reg 4. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4. There is a defence of due diligence: see reg 6(2).

11 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

12 le within the meaning of the Food Safety Act 1990 s 5(1) (as amended), other than non-metropolitan district councils: see PARA 251 ante. As to food authorities see PARA 251 et seq ante.

13 Olive Oil (Marketing Standards) Regulations 1987, SI 1987/1783, reg 3 (amended by SI 1990/2487); Olive Oil (Designations of Origin) Regulations 1999, SI 1999/1513, reg 6(1). As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

UPDATE

443 Olive oil

TEXT AND NOTES--SI 1987/1783, SI 1999/1513 replaced by the Olive Oil (Marketing Standards) Regulations 2003, SI 2003/2577 (amended by SI 2004/2661, SI 2006/3367), consequent to amendments to the relevant EC Regulations.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/444. Organic foods.

444. Organic foods.

Standards for the production of organic foods have been set¹. They apply to unprocessed agricultural crops and to processed products composed essentially of ingredients of plant origin². It is intended to extend the legislation to animals and animal products and to products with a significant animal content³. Until that happens there is no legislation extending to such products and misuse of the term 'organic' in connection with such products would depend on general trade description, food description and labelling offences⁴.

Operators⁵ who produce, prepare or import organic products must be registered with and inspected by the appropriate authority in the member state concerned⁶.

The labelling and advertising of an organic product may refer to organic production methods only if detailed criteria regarding method of production, processing and ingredients are met⁷. The general rules governing labelling apply to organic foods⁸.

There is a system for establishing which products originating from outside the European Union may be marketed within the European Union as organic⁹.

If any person contravenes or fails to comply with the specified provisions relating to organic food¹⁰, or fails to include on the labelling a reference to the code number of the relevant inspection authority or body¹¹, he is guilty of an offence¹².

Each local authority¹³ is required to enforce and execute these provisions within its area¹⁴.

1 See EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) on organic production of agricultural products and indications referring thereto on agricultural foodstuffs (as amended), which is implemented in England and Wales by the Organic Products Regulations 1992, SI 1992/2111 (as amended).

2 EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) art 1.1. For the rules of production see arts 6, 7.

3 Ibid art 1.2.

4 I.e. under the Trade Descriptions Act 1968 s 1 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 475), and the Food Safety Act 1990 ss 14, 15 (see PARAS 360, 372 ante).

5 'Operator' means any natural or legal person who produces, prepares or imports from a third country, with a view to the subsequent marketing of them, organic products, or who markets such products: EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) art 4.5.

6 Ibid arts 8, 9, 10. In England and Wales, the appropriate authority is the Minister for Agriculture, Fisheries and Food, who operates the United Kingdom Register of Organic Food Standards: see the Organic Products Regulations 1992, SI 1992/2111, reg 2(1) (definition added by SI 1994/2286), Organic Products Regulations 1992, SI 1992/2111, reg 3 (amended by SI 1994/2286). The Minister is also an inspection authority under EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) art 9, and has the power to approve private inspection bodies and the power to prohibit the operator concerned from marketing products as organic: Organic Products Regulations 1992, SI 1992/2111, reg 3 (as so amended). In certain circumstances a charge may be made for inspection: reg 5 (amended by SI 1994/2286). As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

7 See EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) art 5.

8 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

9 EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) art 11.

10 le the provisions of EC Council Regulation 2092/91 (OJ L198, 22.7.91, p 1) listed in the Organic Products Regulations 1992, SI 1992/2111, reg 2(1), Schedule (substituted by SI 1997/166): Organic Products Regulations 1992, SI 1992/2111, reg 2(1) (definition substituted by SI 1997/166).

11 See the Organic Products Regulations 1992, SI 1992/2111, reg 3A (added by SI 1997/166).

12 Organic Products Regulations 1992, SI 1992/2111, reg 6 (amended by SI 1997/166). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Organic Products Regulations 1992, SI 1992/2111, reg 6 (as so amended). As to the standard scale see PARA 242 note 18 ante. There is a defence of due diligence: reg 7 (amended by SI 1993/405). Where an offence has been committed by a body corporate, in certain circumstances an officer of the corporation may also be deemed guilty of that offence: Organic Products Regulations 1992, SI 1992/2111, reg 9. Any person who intentionally obstructs or fails to assist any person acting in the enforcement of the Organic Products Regulations 1992, SI 1992/2111 (as amended) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 8.

13 'Local authority' means for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London: *ibid* reg 2(1).

14 *Ibid* reg 6(1) (amended by SI 1997/166).

UPDATE

444 Organic foods

TEXT AND NOTES--SI 1992/2111 now replaced by Organic Products Regulations 2009, SI 2009/842. SI 2009/842 contains provision as to the management of the database established under EC Commission Regulation 889/2008 art 48(1) (SI 2009/842 reg 3), exemption from the application of EC Council Regulation 834/2007 art 28 (SI 2009/842 reg 4), permitted exceptions to the organic production rules (reg 5), control of third country imports (regs 6-8), fees for registering information in the database, for ingredient authorisations, for import authorisations, for approvals of control bodies and post-approval inspections, relating to the control system, and relating to third country imports (regs 9-15), offences and enforcement (regs 16-30), and the use of electronic communications (reg 31).

Regulation 2092/91 now replaced by EC Council Regulation 834/2007 (OJ L189, 20.7.2007, p 1) (amended by EC Council Regulation 967/2008 (OJ L264, 3.10.2008, p 1)). See also EC Commission Regulation 889/2008 (OJ L250, 18.9.2008, p 1) (amended by EC Commission Regulation 710/2009 (OJ L204, 6.8.2009, p 15)).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--SI 1992/2111 reg 5 now SI 2009/842 reg 14. See Case C-393/05 *EC Commission v Austria* [2008] 1 CMLR 1121, ECJ; and Case C-404/05 *EC Commission v Germany* [2008] 1 CMLR 1148, ECJ.

NOTES 7, 8--As to labelling requirements related to the organic production method for feedingstuffs, compound feedingstuffs and feed materials, see EC Commission Regulation 223/2003 (OJ L31, 6.2.2003, p 3).

NOTE 9--As to imports of consignments of organic products from third countries under EC Council Regulation 834/2007 (as amended), see the Organic Products (Imports from Third Countries) Regulations 2009, SI 2009/842, which is intended to implement EC Commission Regulation 1235/2008.

NOTE 11--SI 1992/2111 reg 3A not replicated in SI 2009/842.

NOTE 12--SI 1992/2111 regs 6-9 now SI 2009/842 regs 16-30.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/445.
Slimming foods and low calorie foods.

445. Slimming foods and low calorie foods.

The making of claims in labelling or advertising that food is of reduced or low energy value or that a soft drink is low calorie is controlled by regulations¹. In addition, there are provisions governing the sale of foods specially formulated for use in energy-restricted diets for weight reduction².

A claim in labelling or advertising of food, made expressly or by implication, that a food has a reduced energy value, can only be made if the energy value of a given quantity of the food is not more than three quarters of that of an equivalent quantity of a similar food³. If the claim is that the food has a low energy value, its energy value must not be more than a specified amount by proportion to the quantity, and in the case of an uncooked food which naturally has a low energy value the claim must be in the prescribed form⁴. The energy requirements do not apply if the food is an intense sweetener or a mixture of an intense sweetener and other substances which is significantly sweeter than sucrose⁵. In all cases the food must be marked or labelled with the prescribed nutrition labelling⁶. If the food is a soft drink, these rules do not apply if the description given for the drink is 'low calorie' or any other word or description which implies that the drink is low in calories⁷.

Requirements have been imposed as to the composition, labelling, advertising and presentation of any 'relevant food', that is to say a specially formulated food intended for use in energy-restricted diets for weight reduction, being food which complies with specified compositional requirements⁸. No person may sell any relevant food under any name other than: (1) 'total diet replacement for weight control' in the case of products intended as a replacement for the whole of the daily diet; or (2) 'meal replacement for weight control' in the case of products intended as a replacement for one or more meals of the daily diet⁹. No person may sell any food in the labelling of which either of those names is used unless that food is a relevant food¹⁰. The general rules governing labelling apply to such products¹¹.

No person may sell any relevant food unless it is labelled with specified particulars as to available energy value, vitamin and mineral content, instructions for preparation, statements as to the importance of following these instructions and of maintaining an adequate daily fluid intake and, in certain circumstances, that the food may have a laxative effect¹². In the case of total diet replacements, there must also be a statement that the product provides adequate amounts of all essential nutrients for the day and that it should not be used for more than three weeks without medical advice¹³. In the case of meal replacements, there must also be statement that the product is useful for the intended use only as part of an energy-restricted diet and that other food should be a necessary part of such diet¹⁴.

No person may sell any relevant food the labelling, advertising or presentation of which refers to the rate or amount of weight loss which may result from its use or to a reduction in the sense of hunger or an increase in the sense of satiety¹⁵.

If any person contravenes these provisions¹⁶ he is guilty of an offence¹⁷. It is a defence for the person charged to prove that the food was intended for export to a country which has analogous legislation and the food complied with that legislation¹⁸.

Each food authority¹⁹ is required to enforce and execute these provisions in its area²⁰.

¹ See the Food Labelling Regulations 1996, SI 1996/1499, reg 40(2), Sch 6 (as amended); and the text and notes 3-7 *infra*.

- 2 See the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182; and the text and notes 8-20 infra.
- 3 Food Labelling Regulations 1996, SI 1996/1499, reg 40(2), Sch 6 Pt II. See also PARA 407 ante.
- 4 Ibid Sch 6 Pt II. See also PARA 407 ante. The prescribed wording is 'A low energy food', 'A low calorie food' or 'A low joule food': see Sch 6 Pt II.
- 5 Ibid Sch 6 Pt II.
- 6 Ibid Sch 6 Pt II. As to prescribed nutrition labelling see PARA 408 ante.
- 7 Ibid Sch 6 Pt II. In such a case, the soft drink, after preparation or dilution where appropriate in accordance with instructions given, must contain no more than a specified level of energy: reg 42(1), Sch 8. See also PARA 409 ante.
- 8 See the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, which implement EC Commission Directive 96/8 (OJ L55, 6.3.96, p 22) on foods intended for use in energy-restricted diets for weight reduction. The compositional requirements are contained in the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, reg 1(2), Sch 1.
- 9 Ibid reg 2(1).
- 10 Ibid reg 2(2).
- 11 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.
- 12 Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, reg 3(a)-(e).
- 13 Ibid reg 3(f). No person may sell total diet replacement products unless all individual components making up the product are contained in the same package: reg 5.
- 14 Ibid reg 3(g).
- 15 Ibid reg 4.
- 16 Ie ibid regs 2-5: see the text and notes 9-15 supra.
- 17 Ibid reg 6(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 6(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, reg 9.
- 18 Ibid reg 8. In the case of export to another European Economic Area state, that legislation must comply with EC Commission Directive 96/8 (OJ L55, 6.3.96, p 22): Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, reg 8.
- 19 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, SI 1997/2182, reg 1(2). As to food authorities see PARA 251 et seq ante.
- 20 Ibid reg 7.

UPDATE

445 Slimming foods and low calorie foods

NOTES 8, 18--EC Commission Directive 96/8 amended to allow claims referring to a reduction in the sense of hunger or an increase in the sense of satiety on condition that such claims are based on generally accepted scientific evidence and are well understood by the average consumer reflects the evolution in the range and properties of products: EC Commission Directive 2007/29 (OJ L139, 31.5.2007, p 22).

TEXT AND NOTE 15--SI 1997/2182 reg 4 amended, so as to remove the reference to a reduction in the sense of hunger or increase in the sense of satiety: SI 2007/2591 (England), SI 2007/2753 (Wales).

TEXT AND NOTE 18--SI 1997/2182 reg 8 revoked: SI 2005/2626 (England), SI 2005/3254 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/446.
Medical food.

446. Medical food.

Provisions have been made governing the sale of medical food¹. No person is permitted to sell a medical food unless:

- 375 (1) its formulation and composition comply with the specified requirements² and its instructions for use are such that its use in accordance with those instructions would so comply³;
- 376 (2) it is sold under the name 'Food(s) for special medical purposes'⁴; and
- 377 (3) it is labelled with the mandatory particulars⁵.

No person who, in respect of medical food of a particular type is a designated notifier, that is to say a manufacturer or an importer⁶, but has failed to comply with the requirement to notify the competent authority⁷, is permitted to sell a medical food of that type⁸.

If any person contravenes the provision relating to sale of medical food⁹, or without reasonable excuse contravenes the provisions relating to notification¹⁰, is guilty of an offence¹¹.

Each food authority¹² has a duty to enforce and execute the provisions relating to medical food in its area¹³.

1 See the Medical Food (England) Regulations 2000, SI 2000/845, which implement in England, with effect from 1 November 2001, EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29) on dietary foods for special medical purposes. 'Medical food' means food coming within the classification of dietary foods for special medical purposes for which compositional and labelling requirements are laid down in EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29): Medical Food (England) Regulations 2000, SI 2000/845, reg 2. 'Dietary foods for special medical purposes' means a category of foods for particular nutritional uses specially processed or formulated and intended for the dietary management of patients and to be used under medical supervision; they are intended for the exclusive or partial feeding of patients with a limited, impaired or disturbed capacity to take, digest, absorb, metabolise or excrete ordinary foodstuffs or certain nutrients contained in them or metabolites, or with other medically-determined nutrient requirements, whose dietary management cannot be achieved only by modification of the normal diet, by other foods for particular nutritional uses, or by a combination of the two: EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29) art 1(2).

2 The formulation of dietary foods for special medical purposes must be based on sound medical and nutritional principles; their use, in accordance with the manufacturer's instructions, must be safe and beneficial and effective in meeting the particular nutritional requirements of the persons for whom they are intended, as demonstrated by generally accepted scientific data: *ibid* art 3; Medical Food (England) Regulations 2000, SI 2000/845, reg 3(1)(a). The foods must comply with the compositional criteria specified in EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29) Annex: see art 3; Medical Food (England) Regulations 2000, SI 2000/845, reg 3(1)(a).

3 *Ibid* reg 3(1)(a).

4 EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29) art 4(1); Medical Food (England) Regulations 2000, SI 2000/845, reg 3(1)(b).

5 *Ibid* reg 3(1)(c). The mandatory particulars, which include energy content and nutritional information, are set out in EC Commission Directive 99/21 (OJ L91, 7.4.99, p 29) art 4(2)-(5).

6 *Ie* a manufacturer or importer covered by *ibid* art 5.

7 *Ie* the competent authority referred to in *ibid* art 5. For these purposes, the competent authority is: (1) in respect of medical food manufactured in England, or imported into England from outside the United Kingdom, the Food Standards Agency; and (2) in respect of medical food manufactured in (or imported from outside the United Kingdom into) other territory within the United Kingdom, the authority duly designated in that territory

as the competent authority for the purposes of art 5 in respect of the food: Medical Food (England) Regulations 2000, SI 2000/845, reg 3(3). For the meaning of 'United Kingdom' see PARA 206 note 1 ante. As to the establishment of the Food Standards Agency see PARA 225 et seq ante.

8 Ibid reg 3(2).

9 Ie ibid reg 3(1): see heads (1)-(3) in the text.

10 Ie ibid reg 3(2): see the text and notes 6-8 supra.

11 Ibid reg 5. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5. As to the standard scale see PARA 242 note 18 ante. In any proceedings for an offence under reg 3(1) it is a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed was intended for export to a country (other than a member state) which has analogous legislation and that the food complies with that legislation: reg 6. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence (as it applies for the purposes of ss 8, 14 or 15)) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Medical Food (England) Regulations 2000, SI 2000/845, reg 7.

12 'Food authority' does not include: (1) the council of a district of a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and the Middle Temple) (see PARA 251 ante): Medical Food (England) Regulations 2000, SI 2000/845, reg 2. As to food authorities see PARA 251 et seq ante.

13 Ibid reg 4.

UPDATE

446 Medical food

TEXT AND NOTES--The provisions of SI 2000/845 are reproduced so as to apply to Wales by the Medical Food (Wales) Regulations 2000, SI 2000/1866 (amended by SI 2005/3254, SI 2008/2602).

NOTES--As to the meaning of "the Directive" (ie EC Commission Directive 99/21), in relation to England, see SI 2000/845 reg 2(1) (definition substituted by SI 2007/2591, SI 2007/3521); and in relation to Wales, see SI 2000/1866 reg 2(1) (definition substituted by SI 2007/2753, SI 2007/3573).

NOTE 11--SI 2000/845 reg 6 revoked: SI 2005/2626.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/447. Food containing tryptophan.

447. Food containing tryptophan.

Provisions have been made relating to the sale of food containing tryptophan¹. The addition of tryptophan² to food intended for sale for human consumption³, and the sale or offer for sale of food containing tryptophan are prohibited⁴. The exposure for sale of food containing tryptophan is also prohibited⁵.

However, food containing tryptophan⁶ may be sold or offered for sale by a pharmacist⁷ or in the course of the activities of a hospital⁸ to a person in respect of whom there is an appropriate medical certificate⁹ or to someone acting on that person's behalf¹⁰. In such a case, any person may add tryptophan to food intended for sale in those circumstances for human consumption¹¹, and any person may sell, or offer for sale, food containing tryptophan for the purposes of its being sold in those circumstances¹².

A person who contravenes or fails to comply with these provisions commits an offence¹³. However, a pharmacist or a person acting in the course of the activities of a hospital who contravenes or fails to comply with the provision relating to sale¹⁴ by reason only that a document purporting to be the appropriate medical certificate is not genuine does not commit an offence if, having exercised all due diligence, he has reasonable cause to believe that the document was an appropriate medical certificate¹⁵.

Where any food is certified by a food analyst¹⁶ as being food which it is an offence against these provisions to sell or import, that food may be treated as failing to comply with the food safety requirements of the Food Safety Act 1990¹⁷.

It is the duty of every food authority¹⁸ and of every drugs authority to enforce and execute the provisions relating to tryptophan in food in its area¹⁹.

1 See the Tryptophan in Food Regulations 1990, SI 1990/1728 (as amended); and the text and notes 2-19 infra. 'Tryptophan' means dextrorotatory tryptophan, laevorotatory tryptophan, or racemic tryptophan, or any salt or peptide prepared from any of those forms: reg 1(2). Tryptophan is an essential amino acid.

2 References to adding tryptophan to food do not include references to adding food which contains only tryptophan occurring naturally in it to any other such food or to food which contains no tryptophan, but otherwise include references to adding food to which tryptophan has been added to any other food: *ibid* reg 1(2).

3 *Ibid* reg 2(1), which is expressed to be subject to reg 2(4): see the text and notes 10-12 infra.

4 *Ibid* reg 2(2), which is expressed to be subject to reg 2(4): see the text and notes 10-12 infra.

5 *Ibid* reg 2(3).

6 'Food containing tryptophan' means food intended for human consumption which does not comply with *ibid* reg 2(1) (see the text and note 3 supra) in that tryptophan has been added to it otherwise than in accordance with reg 2(4)(a) (see the text and note 11 infra): reg 2(7).

7 'Pharmacist' means a person lawfully conducting a retail pharmacy business within the meaning of the Medicines Act 1968 s 69 (as amended) (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 909): Tryptophan in Food Regulations 1990, SI 1990/1728, reg 2(7).

8 'Hospital' includes a clinic, nursing home, or similar institution: *ibid* reg 2(7). As to hospitals see HEALTH SERVICES.

9 'Appropriate medical certificate' means a certificate in writing given by a registered medical practitioner that a person requires food to which tryptophan has been added to treat a condition from which a registered

medical practitioner had diagnosed him to be suffering: *ibid* reg 2(7). As to registered medical practitioners see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 3-4.

10 *Ibid* reg 2(4).

11 *Ibid* reg 2(4)(a).

12 *Ibid* reg 2(4)(b).

13 *Ibid* reg 2(5), which is expressed to be subject to reg 2(6): see the text and note 15 *infra*. Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: reg 2(5). As to the standard scale see PARA 242 note 18 *ante*. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 *ante*), s 3 (presumption that food is intended for human consumption) (see PARA 282 *ante*), s 20 (offence due to fault of another person) (see PARA 461 *post*), s 21 (defence of due diligence (as it applies for the purposes of ss 8, 14 or 15)) (see PARA 465 *post*), s 22 (defence of publication in the course of business) (see PARA 467 *post*), s 30(8) (which relates to documentary evidence) (see PARA 269 *ante*), s 33 (obstruction etc of officers) (see PARA 271 *ante*), s 36 (offences by bodies corporate) (see PARA 460 *post*), s 44 (protection of officers acting in good faith) (see PARA 272 *ante*) apply: Tryptophan in Food Regulations 1990, SI 1990/1728, reg 2A (added by SI 1990/2486).

14 *Ie* the Tryptophan in Food Regulations 1990, SI 1990/1728, reg 2(4): see the text and notes 10-12 *supra*.

15 *Ibid* reg 2(6).

16 As to food analysts see PARA 267 *ante*.

17 Tryptophan in Food Regulations 1990, SI 1990/1728, reg 3 (substituted by SI 1990/2486). The food safety requirements are contained in the Food Safety Act 1990 s 9 (see PARA 284 *ante*), and s 8(3) (see PARA 283 *ante*) applies for the purposes of the Tryptophan in Food Regulations 1990, SI 1990/1728 (as amended) as it applies for the purposes of the Food Safety Act 1990: Tryptophan in Food Regulations 1990, SI 1990/1728, reg 3 (as so substituted).

18 'Food authority' means: (1) as respects any district or London borough, the council of the district or borough; (2) as respects the City of London, the Common Council; and (3) as respects the Inner Temple and the Middle Temple, the Sub-Treasurer and the Under Treasurer respectively: *ibid* reg 1(2). As to food authorities see PARA 251 *et seq* *ante*.

19 *Ibid* reg 5 (amended by SI 1990/2486).

UPDATE

447 Food containing tryptophan

TEXT AND NOTES--Replaced. SI 1990/1728 replaced: Tryptophan in Food (England) Regulations 2005, SI 2005/2630; Tryptophan in Food (Wales) Regulations 2005, SI 2005/3111.

No person may (1) add tryptophan¹ to food; (2) sell, or offer for sale, food containing tryptophan; or (3) expose for sale food containing tryptophan². However, food containing tryptophan may be sold or offered for sale by a pharmacist³, or, in the course of the activities of a hospital⁴, to a person in respect of whom there is an appropriate medical certificate or to someone acting on that person's behalf, and (a) any person may add tryptophan to food intended for sale in those circumstances; and (b) any person may sell, or offer for sale, food containing tryptophan for the purposes of its being sold in those circumstances⁵. Further, heads (1)-(3) above, do not apply in respect of (i) laevorotatory tryptophan added to any infant formula⁶ or follow-on formula⁷; (ii) laevorotatory tryptophan added to any processed cereal-based food or baby food⁸; or (iii) laevorotatory tryptophan, its sodium, potassium, calcium or magnesium salts or its hydrochloride, added in compliance with EC Commission Directive 2001/15 (replaced by EC Commission Regulation 953/2009 (OJ L269, 14.10.2009, p 9)) to any food for a particular nutritional use referred to in Directive 2001/15 Annex, if that added substance complies with the purity criteria specified for

that substance in the European Pharmacopoeia⁹. Moreover, heads (1)-(3) above, do not apply in respect of laevorotatory tryptophan added to any food supplement¹⁰ if (A) the laevorotatory tryptophan complies with the purity criteria specified for that substance in the European Pharmacopoeia; and (B) the recommended daily dose for that food supplement does not exceed 220 mg¹¹.

A person who contravenes these provisions commits an offence¹². However, a pharmacist or a person acting in the course of the activities of a hospital who contravenes the provision relating to sale¹³ by reason only that a document purporting to be the appropriate medical certificate¹⁴ is not genuine does not commit an offence if, having exercised all due diligence, that person has reasonable cause to believe that the document was an appropriate medical certificate¹⁵.

Where any food is certified by a food analyst as being food which it is an offence under these provisions to sell, that food may be treated as failing to comply with the food safety requirements of the Food Safety Act 1990¹⁶.

It is the duty of every food authority¹⁷ to enforce and execute the provisions relating to tryptophan in food in its area, and, in relation to imported food, it is the duty of every port health authority¹⁸ to enforce and execute the provisions relating to tryptophan in food in its district¹⁹.

1 'Tryptophan' means dextrorotatory tryptophan, laevorotatory tryptophan or racemic tryptophan, or any salt or peptide prepared from any of those forms: Tryptophan in Food (England) Regulations 2005, SI 2005/2630, reg 2(1), Tryptophan in Food (Wales) Regulations 2005, SI 2005/3111, reg 2(1). References to adding tryptophan to food do not include cases where food which contains only tryptophan occurring naturally in it is added to any other such food or to food which contains no tryptophan, but otherwise include cases where food to which tryptophan has been added is added to any other food, and references in the following provisions (see TEXT AND NOTES 2-11) to food containing tryptophan do not include cases where that tryptophan only occurs naturally in the food or an ingredient of the food: reg 2(2).

2 Ibid reg 4.

3 'Pharmacist' means a person lawfully conducting a retail pharmacy business within the meaning of the Medicines Act 1968 s 69: SI 2005/2630 reg 2(1), SI 2005/3111 reg 2(1).

4 'Hospital' includes a clinic, nursing home or similar institution: ibid reg 2(1).

5 Ibid reg 5(1).

6 'Infant formula' means a food intended for particular nutritional use by infants in good health during the first four to six months of life and satisfying by itself the nutritional requirements of such infants; 'infant' means a child under the age of twelve months: ibid reg 2(1).

7 'Follow-on formula' means a food intended for particular nutritional use by infants in good health who are aged over four months and constituting the principal liquid element in a progressively diversified diet: ibid reg 2(1).

8 'Processed cereal-based food' and 'baby food' have the same meaning as in, in relation to England, the Processed Cereal-based Foods and Baby Foods for infants and Young Children (England) Regulations 2003, SI 2003/3207, and, in relation to Wales, the Processed Cereal-based Foods and Baby Food for Infants and Young Children (Wales) Regulations 2004, SI 2004/314: SI 2005/2630 reg 2(1), SI 2005/3111 reg 2(1).

9 Ibid reg 5(2).

10 'Food supplement' means any food the purpose of which is to supplement the normal diet and which (1) is a concentrated source of a vitamin or mineral or other substance with a nutritional or physiological effect, alone or in combination; and (2) is sold in dose form; 'dose form' means a form such as capsules, pastilles, tablets, pills, and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids or powders designed to be taken in measured small unit quantities: ibid reg 2(1).

11 Ibid reg 5(3).

12 Ibid reg 6(1). Any person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: reg 6(1). Where any requirements of these provisions are contravened in respect of any food and that food is part of a batch, lot or consignment of food of the same class or description, it is presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements: reg 3.

13 Ie ibid reg 4(b): see TEXT head (2).

14 'Appropriate medical certificate' means a certificate in writing given by a registered medical practitioner that a person requires food to which tryptophan has been added to treat a condition from which a registered medical practitioner has diagnosed that person to be suffering: ibid reg 2(1).

15 Ibid reg 6(2).

16 Ibid reg 9. The food safety requirements are contained in the 1990 Act s 9. Certain functions under the 1990 Act are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733 and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

17 In relation to England, 'food authority' does not include (1) the council of a district in a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change; (2) the appropriate Treasurer referred to in the 1990 Act s 5(1)(c): SI 2005/2630 reg 2(1). In relation to Wales, 'food authority' has the same meaning as in the 1990 Act s 5(1A), (3)(a), (b): SI 2005/3111 reg 2(1).

18 In relation to England, 'port health authority' means (1) in relation to the London port health district, within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984 by s 7(1), the Common Council of London; and (2) in relation to any port health district constituted by order under s 2(3), a port health authority for that district constituted by order under s 2(4): SI 2005/2630 reg 2(1). In relation to Wales, 'port health authority' means in relation to any port health district constituted by order under the 1984 Act s 2(3), a port health authority for that district constituted by order under s 2(4): SI 2005/3111 reg 2(1).

19 SI 2005/2630 reg 7, SI 2005/3111 reg 7.

NUE

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/448.
Spirit drinks.

448. Spirit drinks.

There are provisions reserving names for many spirit drinks and prescribing compositional and labelling requirements for all spirit drinks¹. Subject to certain derogations, these provisions apply to spirit drinks intended for export². To be marketed under one of the reserved names, a spirit drink must comply with the applicable definition and requirements³. In many cases there is also a minimum alcoholic strength prescribed⁴. The provisions are directed at protecting traders from unfair competition as well as protecting the consumer⁵. If any substance other than one authorised by the legislation is added to a spirit drink, the reserved name cannot be used⁶. Spirit drinks which do not meet the requirements for the reserved names must be described for marketing purposes as 'spirit drink' or 'spirit' although they may be supplemented by a geographic indication in some cases⁷. There are provisions relating to the names permitted for spirit drinks imported into the European Union⁸.

In so far as their labelling is regulated by European legislation, the general rules governing labelling⁹ do not apply to spirit drinks¹⁰.

If any person contravenes or fails to comply with any provision relating to spirit drinks¹¹, he is guilty of an offence¹².

It is unlawful to sell as Scotch whisky any spirits not conforming to the legal definition or below the specified alcoholic strength¹⁴.

Each food authority¹⁵ is required to secure the enforcement and execution of these provisions within its area¹⁶, and each port health authority must secure the enforcement and execution of these provisions in so far as they relate to the importation and exportation of spirit drinks¹⁷.

1 See EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) laying down general rules on the definition, description and presentation of spirit drinks (as amended), which is implemented in England and Wales by the Spirit Drinks Regulations 1990, SI 1990/1179 (as amended). 'Spirit drink' means an alcoholic liquid intended for human consumption, having particular organoleptic qualities and, with certain exceptions, a minimum alcoholic strength of 15% vol and produced either directly by distillation as defined or by the mixture of a spirit drink with certain other liquids: EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) art 1.2. See also INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 423.

2 Ibid art 12.

3 The reserved names, although this is not expressly stated, are by clear implication those set out in ibid art 1.4. The requirements are set out in arts 1.4, 9, and compliance is required by arts 2, 9. The reserved name was infringed when the term 'whisky' was used to describe a clear spirit drink made by the redistillation of blended Scotch whisky since it did not meet the standards prescribed in EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) (as amended): *Scotch Whisky Association v Glen Kella Distillers Ltd* [1997] 16 LS Gaz R 29. It was also infringed when the term 'whisky' was used in the descriptions 'Blended Whisky Spirit' and 'Spiritueux au Whisky' on bottles containing a drink with an alcoholic strength that was below the specified minimum for whisky: Case C-136/96 *Scotch Whisky Association v Compagnie Financière Européenne de Prises de Participation* [1998] ECR I-4571, ECJ. An action based on EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) (as amended) could be brought when Scotch whisky was sold as 'Welsh Whisky': *Matthew Gloag & Son Ltd v Welsh Distillers Ltd* [1998] 2 CMLR 203. See also INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 423.

4 EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) art 3.

5 *Scotch Whisky Association v Glen Kella Distillers Ltd* [1997] 16 LS Gaz R 29, Ch D; *Scotch Whisky Association v JD Vintners Ltd* [1997] Eu LR 446.

6 EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) art 4.

7 Ibid art 5.

8 Ibid art 11.

9 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

10 See ibid reg 4(2)(k); and PARA 374 ante. For the detailed labelling requirements imposed by EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) see art 7.

11 Ie any provision of EC Council Regulation 1576/89 (OJ L160, 12.6.89, p 1) (as amended) as set out in the Spirit Drinks Regulations 1990, SI 1990/1179, reg 2, Schedule (substituted by SI 1995/732).

12 Spirit Drinks Regulations 1990, SI 1990/1179, reg 5 (amended by SI 1990/2486; and SI 1995/732). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: Spirit Drinks Regulations 1990, SI 1990/1179, reg 5 (as so amended). As to the statutory maximum see PARA 261 note 22 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Spirit Drinks Regulations 1990, SI 1990/1179, reg 2A (added by SI 1990/2486).

14 See the Scotch Whisky Order 1990, SI 1990/998; and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 423. A court may grant an injunction prohibiting such action on the application of any person carrying on the business of producing Scotch whisky or any representative of a group of such persons: see the Scotch Whisky Act 1998 s 2; and INTOXICATING LIQUOR vol 26 (2004 Reissue) PARA 423.

15 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: Spirit Drinks Regulations 1990, SI 1990/1179, reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

16 Spirit Drinks Regulations 1990, SI 1990/1179, reg 3(1) (amended by SI 1990/2486; and SI 1995/732).

17 Spirit Drinks Regulations 1990, SI 1990/1179, reg 3(2).

UPDATE

448 Spirit drinks

TEXT AND NOTES--EC Council Regulation 1576/89 replaced: European Parliament and EC Council Regulation 110/2008 (OJ L39, 13.2.2008, p 16) on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks. Regulation 110/2008 is implemented by Spirit Drinks Regulations 2008, SI 2008/3206 (amended by SI 2009/3235), which replace SI 1990/1179 and create an additional offence to protect registered geographical indications (reg 4, Sch 2) and a scheme for the issue and payment of penalty notices for certain offences (regs 22-29, Schs 3, 4).

NOTE 3, 4--As to the minimum alcohol by volume to be contained in vodka see *Diageo North America Inc v Intercontinental Brands (ICB) Ltd* [2010] EWHC 17 (Ch), [2010] All ER (D) 133 (Jan).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/449. Spreadable fats.

449. Spreadable fats.

There are provisions which reserve names for spreadable fats, including butter, dairy spread and margarine, and which prescribe compositional and labelling requirements for them¹. The sales descriptions of defined products must be those prescribed for them². There are controls over the use of the words 'vegetable', 'traditional', 'reduced-fat' and 'low-fat' and certain other words³. In addition to the prescribed sales description, further information must be indicated in the labelling and presentation of spreadable fats, the total percentage fat content by weight, the vegetable, milk or other animal fat content in decreasing order of weighted importance as a percentage by total weight (for compound fats) and the percentage salt content must be indicated in a particularly legible manner in the list of ingredients⁴. The required labelling must be easy to understand and marked in a conspicuous place in such a way as to be easily visible, clearly legible and indelible⁵. The general labelling rules⁶ do not apply to the extent that the labelling of spreadable fats is regulated by European legislation⁷.

Spreadable fats may not be supplied or transferred without processing to the ultimate consumer either directly or through restaurants, hospitals, canteens or similar establishments unless they meet the specified compositional requirements⁸.

Member states are permitted to prescribe different quality standards⁹.

If any person contravenes or fails to comply with these provisions¹⁰ he is guilty of an offence¹¹. It is a defence for the person charged to prove that the food was intended for export to a country which has analogous legislation and that it complies with that legislation¹².

Each food authority¹³ is required to enforce and execute these provisions in its area¹⁴.

1 See EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) laying down standards for spreadable fats, which is implemented in England by the Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457. In relation to Wales see the Spreadable Fats (Marketing Standards) Regulations 1995, SI 1995/3116 (revoked in relation to England). EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) applies to certain milk fats and certain fats composed of plant and/or animal products, with a specified fat content, which are intended for human consumption and which remain solid at a temperature of 20° Celsius and which are suitable for use as spreads: art 1.1, 1.2.

2 Ibid art 2.2, Annex.

3 Ibid arts 3, 4, 5.

4 Ibid art 3.1.

5 Ibid art 3.5.

6 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

7 See ibid reg 4(2)(g); and PARA 374 ante.

8 EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) art 2.1.

9 Ibid art 6. In exercise of this power, minimum vitamin A and D contents have been prescribed in relation to margarine in England: see the Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, reg 4. The provisions of reg 4 do not apply to spreadable fats brought into England from another European Economic Area state in which it was lawfully produced and sold and which is suitably labelled to give the nature of the margarine: reg 3(2).

10 le any provision of EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2), or EC Commission Regulation 577/97 (OJ L87, 2.4.97, p 3) laying down certain detailed rules for the application of EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) and of EC Council Regulation 1898/87 (OJ L182, 3.7.87, p 36) (as amended), or the Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, reg 4.

11 Ibid reg 6. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 6. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 32 (powers of entry) (see PARA 261 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offenders (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, reg 8.

12 Ibid reg 7(a). In the case of export to a member state and, in certain cases, to an European Economic Area state which is not a member state, the legislation must comply with EC Council Regulation 2991/94 (OJ L316, 9.12.94, p 2) and EC Commission Regulation 577/97 (OJ L87, 2.4.97, p 3) (as amended): Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, reg 7(b). The Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, do not apply in certain circumstances to any spreadable fat which is brought into Great Britain from an European Economic Area state in which it was lawfully produced and sold and which is suitably labelled to give the nature of the spreadable fat: reg 3(1). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

13 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Spreadable Fats (Marketing Standards) (England) Regulations 1999, SI 1999/2457, reg 2(1). As to food authorities see PARA 251 et seq ante.

14 Ibid reg 5.

UPDATE

449 Spreadable fats

TEXT AND NOTES--Regulation 2991/94 is replaced by EC Council Regulation 1234/2007, which is implemented, in relation to England, by the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008, SI 2008/1287 (replacing SI 1999/2457), and, in relation to Wales, by the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008, SI 2008/1341 (replacing SI 1995/3116).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/450. Sugar products.

450. Sugar products.

There are provisions which reserve certain descriptions for use with specified sugar products, including most forms of sugar and sugar solution¹, impose labelling and advertising restrictions and control the ingredients of such products². The general rules on labelling³ do not apply to such products⁴.

No person may sell or consign or deliver pursuant to a sale any specified sugar product in a container unless there is applied to it a true statement containing the appropriate reserved description⁵ and, in some cases, a further declaration such as 'crystallised' or 'contains permitted colour'⁶. There are controls over the use of the word 'white' in relation to certain sugar products⁷. There are provisions relating to legibility and layout of labels similar to the general labelling rules⁸, and special provisions with regard to the provision of a statement in connection with the sale of glucose syrup and dried glucose syrup otherwise than by retail⁹.

No person may label any food sold by him, or publish or be a party to the publication of any advertisement for food, which bears or includes any reserved description or any derivative of one, or any substantially similar word or descriptions unless the food is one to which the reserved description applies, or it is clear that the sugar product to which it relates is only an ingredient of the food, or it is clear that the food either is not, or does not contain, a specified sugar product¹⁰.

No person may sell, consign or deliver any specified sugar products which contain any added ingredient apart from certain permitted additives¹¹.

If any person contravenes or fails to comply with these provisions¹² he is guilty of an offence¹³. It is a defence for the person charged to prove that the food was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence¹⁴.

Each food authority¹⁵ is required to enforce and execute these provisions in its area¹⁶.

1 For the specified sugar products see the Specified Sugar Products Regulations 1976, SI 1976/509, reg 2(1), Sch 1 col 2 (Sch 1 substituted by SI 1982/255). For the methods of analysis see the Specified Sugar Products Regulations 1976, SI 1976/509, reg 2(1), Sch 2.

2 See the Specified Sugar Products Regulations 1976, SI 1976/509 (as amended), which implement EC Council Directive 73/437 (OJ L356, 27.12.73, p 71) on the approximation of the laws of the Member States concerning certain sugars intended for human consumption (as amended).

3 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

4 See *ibid* reg 4(2)(a); and PARA 374 ante.

5 For the reserved descriptions see the Specified Sugar Products Regulations 1976, SI 1976/509, Sch 1 col 1 (as substituted: see note 1 *supra*).

6 *Ibid* reg 5 (amended by SI 1995/3124; and SI 1995/3187).

7 Specified Sugar Products Regulations 1976, SI 1976/509, reg 6.

8 *Ibid* reg 7. As to the general rules as to labelling see PARA 373 et seq ante.

9 *Ibid* reg 8 (amended by SI 1995/3187).

10 Specified Sugar Products Regulations 1976, SI 1976/509, reg 4. However, the reserved descriptions 'sugar' and 'white sugar' may be used for extra white sugar: see reg 4.

11 Ibid reg 9 (amended by SI 1995/3124; and SI 1995/3187).

12 Ie the provisions of the Specified Sugar Products Regulations 1976, SI 1976/509 (as amended).

13 Ibid reg 10(1) (amended by the Food and Drugs (Amendment) Act 1982 s 6; SI 1982/1727; and SI 1985/67). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding £2,000: Specified Sugar Products Regulations 1976, SI 1976/509, reg 10(1). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Specified Sugar Products Regulations 1976, SI 1976/509, reg 2A (added by SI 1990/2486).

14 Specified Sugar Products Regulations 1976, SI 1976/509, reg 11(a) (reg 11 added by SI 1991/1476). It is also a defence if the food was intended for export and was prepared and labelled for sale before 26 July 1991: Specified Sugar Products Regulations 1976, SI 1976/509, reg 11(b) (as so added).

15 'Food authority' means: (1) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London; and (2) in Wales, the county council: ibid reg 2(1) (definition added by SI 1990/2486). As to food authorities see PARA 251 et seq ante.

16 Specified Sugar Products Regulations 1976, SI 1976/509, reg 10(2) (amended by SI 1990/2486).

UPDATE

450 Sugar products

TEXT AND NOTES--SI 1976/509 replaced by Specified Sugar Products (England) Regulations 2003, SI 2003/1563 (amended by SI 2005/2626, SI 2009/3238); Specified Sugar Products (Wales) Regulations 2003, SI 2003/3047 (amended by SI 2005/3254, SI 2009/3378).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/451. Natural mineral waters.

451. Natural mineral waters.

There are provisions governing natural mineral waters¹, spring waters and other drinking waters supplied in containers².

There are controls over hygiene and similar matters in connection with the method of exploitation of sources and the bottling and sale of natural mineral water³. These controls include, in most cases, a requirement that the water is placed in the containers in which it will be sold at the source⁴. There is also a prohibition on bottling or selling any natural mineral water which is bottled, in any container other than one which is fitted with closures designed to avoid any possibility of adulteration or contamination⁵. The permitted treatments are prescribed⁶, and no person may bottle or sell any natural mineral water which fails to meet prescribed microbiological criteria or which has any organoleptic defect⁷. There are provisions dealing with inspection and analysis⁸.

Every natural mineral water bottled for sale must be marked or labelled with a prescribed sales description⁹. It must also be labelled with the name of the place where the spring is exploited, a statement of the analytical composition and, where it has undergone certain permitted treatments, wording about those treatments¹⁰. No words, illustration or sign may be used in the labelling or advertising of a natural mineral water which suggests a characteristic which it does not possess¹¹. Only certain specified claims of prevention, treatment or cure of human disease may be made in the labelling or advertising of natural mineral waters¹². No person may sell any natural mineral water labelled in contravention of any of the foregoing labelling requirements¹³. Nor may any person sell a natural mineral water taken from any one source under more than one trade description¹⁴. The general labelling rules apply to natural mineral waters¹⁵.

If any person contravenes these provisions¹⁶ he is guilty of an offence¹⁷. It is a defence for the person charged to show that the water was intended for export to a European Economic Area state and the water is correctly marked¹⁸.

Each food authority¹⁹ is required to enforce and execute these provisions in its area²⁰.

1 'Natural mineral water' means water which: (1) is microbiologically wholesome; (2) originates in an underground water table or deposit and emerges from a spring tapped at one or more natural or bore exits; and (3) is recognised in accordance with the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540: regs 2(1), 4, Sch 1 (amended by SI 2000/656). There are reciprocal arrangements for recognition of natural mineral water: see the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 4 (amended by SI 2000/656).

2 See the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540 (as amended), which implement EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) on the approximation of the laws of the member states relating to the exploitation and marketing of natural mineral waters (as amended). As to spring waters see PARA 452 post; and as to other drinking water in containers see PARA 453 post.

3 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 6. The bottling and exploitation requirements are those contained in reg 8, and in EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) Annex II para 2.

4 Ibid Annex II para 2(d).

5 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 9.

6 Ibid reg 7.

7 Ibid reg 8; EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) Annex I Section II.

8 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, regs 14-16.

9 Ibid reg 10(1), (2).

10 Ibid reg 10(3), (4). The name must be indicated in letters at least one-and-a-half times the height and width of the largest letters used in any other place name on the label: reg 10(1)(b)(ii); EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) art 8.3.

11 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 10(1)(e); EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) Annex III.

12 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 10(1)(d), (f), (g).

13 Ibid reg 10(5)(a)-(c).

14 Ibid reg 10(5)(d).

15 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante. No person is permitted to sell any water if it is not marked or labelled in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 38 (as amended) (intelligibility) (see PARA 405 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(2), (3).

16 Ie ibid regs 5-9, 10(1), (5), 19.

17 Ibid reg 17. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 17. As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(1).

18 Ibid reg 18(3).

19 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 13(3). As to food authorities see PARA 251 et seq ante.

20 Ibid reg 13(1). Certain checks must be carried out by other authorities (ie the council of a district, London borough or county or county borough), and certain provisions are enforced by them: see reg 13(2).

UPDATE

451-453 Natural mineral waters ... drinking water in containers

SI 1999/1540 replaced, in relation to England, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007, SI 2007/2785 (amended by SI 2009/1598); and, in relation to Wales, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007, SI 2007/3165 (amended by SI 2009/1897, SI 2010/748). Directive 80/777 replaced: European Parliament and EC Council Directive 2009/54 on the exploitation and marketing of natural mineral waters.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/452.
Spring water.

452. Spring water.

There are provisions which prescribe labelling, production and composition standards for spring water¹. No person may cause any water to be marked or labelled with the description 'spring water' unless it: (1) is extracted from a spring²; (2) meets the exploitation and bottling requirements and the microbiological and organoleptic standards applicable to natural mineral waters³; (3) is bottled at source and, if it has not undergone any treatment, is intended for consumption in its natural state; (4) is marked or labelled with the name of the place where the spring is exploited and the name of the spring; (5) meets the requirements as to trade descriptions applicable to natural mineral waters⁴; and (6) meets the quality standards applicable to drinking water in containers⁵. No person may sell any water marked or labelled in contravention of these requirements⁶. The general labelling rules apply to spring water⁷.

There are provisions dealing with inspection and analysis⁸.

If any person contravenes these requirements he is guilty of an offence⁹. It is a defence for the person charged to prove that the water was intended for export to a country which had analogous legislation and it complied with that legislation¹⁰.

Each food authority¹¹ is required to enforce and execute these provisions in its area¹².

1 See the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, which implement EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) on the approximation of the laws of the member states relating to the exploitation and marketing of natural mineral waters (as amended). See also PARA 451 note 2 ante.

2 'Spring' is not defined in the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540 (as amended), or in EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) (as amended).

3 As to these requirements and standards see PARA 451 ante.

4 As to the descriptions applicable to natural mineral waters see EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) art 8; and PARA 451 ante.

5 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 11(1). As to the quality standards applicable to drinking water in containers see PARA 453 post.

6 Ibid reg 11(3). There is an exception in relation to water transported on or before 23 November 1996: see reg 11(2).

7 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante. No person is permitted to sell any water if it is not marked or labelled in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 38 (as amended) (intelligibility) (see PARA 405 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(2), (3).

8 Ibid regs 14-16.

9 Ibid reg 17. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 17. As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(1).

10 Ibid reg 18(1). In the case of water intended for export to a European Economic Area state, the legislation must comply with EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) (as amended): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 18(1).

11 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 13(3). As to food authorities see PARA 251 et seq ante.

12 Ibid reg 13(1). Certain checks must be carried out by other authorities (ie the council of a district, London borough or county or county borough), and certain provisions are enforced by them: see reg 13(2).

UPDATE

451-453 Natural mineral waters ... drinking water in containers

SI 1999/1540 replaced, in relation to England, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007, SI 2007/2785 (amended by SI 2009/1598); and, in relation to Wales, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007, SI 2007/3165 (amended by SI 2009/1897, SI 2010/748). Directive 80/777 replaced: European Parliament and EC Council Directive 2009/54 on the exploitation and marketing of natural mineral waters.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/453.
Drinking water in containers.

453. Drinking water in containers.

There are provisions which prescribe quality standards for drinking water supplied in containers¹ other than natural mineral waters², spring waters³ and medicinal products⁴. No person may bottle or sell any drinking water unless it satisfies the prescribed quality requirements⁵. No person may cause any bottled water which does not satisfy certain criteria⁶ to be marked or labelled with any forbidden designation, proprietary name, trade mark, brand name, illustration or other sign⁷. The general labelling rules apply to bottled water⁸.

There are provisions dealing with inspection and analysis⁹.

If any person contravenes these provisions¹⁰ he is guilty of an offence¹¹. It is a defence for the person charged to prove that the water was intended for export to a country which had analogous legislation and it complied with that legislation¹².

Each food authority¹³ is required to enforce and execute these provisions in its area¹⁴.

1 See the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540 (as amended), which implement EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) on the approximation of the laws of the member states relating to the exploitation and marketing of natural mineral waters (as amended). See also PARA 451 note 2 ante.

2 As to natural mineral waters see PARA 451 ante.

3 As to spring waters see PARA 452 ante.

4 I.e. a water which has a product licence issued under the Medicines Act 1968 or a marketing authorisation to which the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994, SI 1994/3142 (as amended) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 34 et seq) apply: Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 3.

5 Ibid reg 12(1), Sch 3. 'Drinking water' means water intended for sale for human consumption other than natural mineral water or water which is marked or labelled 'spring water': reg 2(1).

6 I.e. the provisions of EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) Annex I Section 1.

7 Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 12(2). The use of such signs is forbidden by EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) art 9.1.

8 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante. No person is permitted to sell any water if it is not marked or labelled in accordance with the Food Labelling Regulations 1996, SI 1996/1499, reg 38 (as amended) (intelligibility) (see PARA 405 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(2), (3).

9 Ibid regs 14-16.

10 I.e. ibid regs 12, 19.

11 Ibid reg 17. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 17. As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 22 (defence of publication in the course of business) (see PARA 467 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 35(1)-(3) (punishment of offences (in so far as it relates to offences under s 33(1), (2))) (see PARA 468 post), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 19(1).

12 Ibid reg 18(1). In the case of water intended for export to a European Economic Area state, that legislation must comply with EC Council Directive 80/777 (OJ L229, 30.8.80, p 1) (as amended): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 18(1).

13 'Food authority' does not include: (1) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or (2) the appropriate Treasurer referred to in the Food Safety Act 1990 s 5(1)(c) (which deals with the Inner and Middle Temple) (see PARA 251 ante): Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, SI 1999/1540, reg 13(3). As to food authorities see PARA 251 et seq ante.

14 Ibid reg 13(1). Certain checks must be carried out by other authorities (ie the council of a district, London borough or county or county borough), and certain provisions are enforced by them: see reg 13(2).

UPDATE

451-453 Natural mineral waters ... drinking water in containers

SI 1999/1540 replaced, in relation to England, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007, SI 2007/2785 (amended by SI 2009/1598); and, in relation to Wales, by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007, SI 2007/3165 (amended by SI 2009/1897, SI 2010/748). Directive 80/777 replaced: European Parliament and EC Council Directive 2009/54 on the exploitation and marketing of natural mineral waters.

453 Drinking water in containers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/454. Quick-frozen foodstuffs.

454. Quick-frozen foodstuffs.

There are provisions which govern the method of production, packaging and labelling of quick-frozen foodstuffs¹ and the standards of equipment which must be used in the manufacture, distribution and sale of quick-frozen foodstuffs².

No person may sell a quick-frozen foodstuff for human consumption unless the standards of production and wholesomeness of ingredients prescribed have been observed³, and no person may sell such a foodstuff to the ultimate consumer unless it has been packed in prepackaging suitable to protect it from microbial and other external contamination and against dehydration and it has remained in such prepackaging until sale⁴. Every manufacturer, storer, transporter, local distributor and retailer of any quick-frozen foodstuff intended by him for sale for human consumption must ensure that the equipment used is such as to ensure that no act or omission on his part would cause the sale of the foodstuff in contravention of these provisions⁵. Any means of storage or transport (other than rail transport) used by such a person in respect of the foodstuff must be fitted with an instrument to measure or monitor temperature and which meets prescribed standards⁶, and the temperature must be recorded at regular intervals⁷.

A quick-frozen foodstuff intended for supply, without further processing, to the ultimate consumer or to a catering establishment must have added to its sales name⁸, the description 'quick-frozen'⁹. It must also be marked with: (1) an indication of the date of minimum durability; (2) an indication of the maximum period which it is advisable to store it; (3) an indication of either the temperature at which or the equipment in which it is advisable to store it or both; (4) a lot marking¹⁰; and (5) a clear message of the type 'do not refreeze after defrosting'¹¹. For quick-frozen foodstuffs not intended for supply without further processing to the ultimate consumer or to a catering establishment, the additional labelling is confined to a lot marking and the name or business name and address of the manufacturer or packer, or of a seller established within the European Economic Community¹². The description 'quick-frozen' may not be used in the labelling for the purpose of sale of any food other than one which is, or qualifies once labelled as, a quick-frozen foodstuff¹³. The general labelling rules apply to quick-frozen foodstuffs¹⁴.

If any person contravenes these provisions¹⁵ he is guilty of an offence¹⁶.

Each food authority¹⁷ is required to enforce and execute these provisions in its area¹⁸.

1 'Quick-frozen foodstuff' means a product: (1) comprising food which has undergone a freezing process known as 'quick-freezing' whereby the zone of maximum crystallisation is crossed as rapidly as possible, depending on the type of product; and (2) which is labelled for the purpose of sale to indicate that it has undergone that process, but does not include ice-cream or any other edible ice: Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 2(1).

2 See the Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615 (as amended), which implement EC Council Directive 89/108 (OJ L40, 11.2.89, p 4) on the approximation of the laws of the member states relating to quick-frozen foodstuffs for human consumption (as amended).

3 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 3, Sch 1 (both amended by SI 1994/298).

4 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 4.

5 Ibid reg 6.

6 Ibid reg 6A(1) (reg 6A added by SI 1994/298).

7 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 6A(2) (as added: see note 6 supra). An authorised officer has power to inspect quick-frozen foodstuffs if he has reasonable doubts that the prescribed temperatures are not being maintained: reg 7A (added by SI 1994/298).

8 le the name with which it is labelled in accordance with the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARA 373 et seq ante.

9 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 5(2), (4). The equivalents in other languages are set out in EC Council Directive 89/108 (OJ L40, 11.2.89, p 4) art 8.1(a).

10 As to lot-marking see PARAS 414-416 ante.

11 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 5(2), (4).

12 Ibid reg 5(3), (4). This requirement as to name and address does not appear necessary as it is required anyway by the Food Labelling Regulations 1996, SI 1996/1499 (as amended): see PARA 388 ante.

13 Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 5(1). This provision is formulated in this way because the definition of 'quick-frozen foodstuffs' (see note 1 supra) means that a food does not become such until it is so labelled.

14 See the Food Labelling Regulations 1996, SI 1996/1499 (as amended); and PARA 373 et seq ante.

15 le the provisions of the Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615 (as amended).

16 Ibid reg 7(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(1). As to the standard scale see PARA 242 note 18 ante. The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 20 (offence due to fault of another person) (see PARA 461 post), s 21 (defence of due diligence) (see PARA 465 post), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 post), s 44 (protection of officers acting in good faith) (see PARA 272 ante), s 58(1) (which relates to territorial waters) (see PARA 206 ante) apply: Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 8.

17 'Food authority' does not include the appropriate treasurer referred to in the Food Safety Act 1990 s 5(1) (c) (which deals with the Inner Temple and the Middle Temple) (see PARA 251 ante): Quick-frozen Foodstuffs Regulations 1990, SI 1990/2615, reg 7(3). As to food authorities see PARA 251 et seq ante.

18 Ibid reg 7(2).

UPDATE

454 Quick-frozen foodstuffs

TEXT AND NOTES--Replaced.

These are provisions which govern the method of production, packaging and labelling of quick-frozen foodstuffs¹ and the standards of equipment which must be used in the manufacture, distribution and sale of quick-frozen foodstuffs².

No person may place a quick-frozen foodstuff on the market for human consumption unless the prescribed conditions are satisfied in relation to it³, and no person may place any quick-frozen foodstuff intended for the ultimate consumer on the market unless it has been packed by its manufacturer or packer in such prepackaging as is suitable to protect it from microbial and other forms of external contamination and against dehydration, and the quick-frozen foodstuff has remained in such prepackaging up to the time of placing on the market⁴. Each food operator handling a quick-frozen foodstuff intended for placing on the market for human consumption must ensure during each stage during which it is within his care and control that the equipment used in respect of that foodstuff is such as to ensure that no act or omission on his part would cause the placing on the market of the foodstuff for human consumption in contravention of these provisions⁵.

A quick-frozen foodstuff intended for supply, without further processing, to the ultimate consumer or to a catering establishment must, in addition to the description 'quick-frozen'⁶ added to its sales name, be marked or labelled on its packaging, container or wrapping, or on a label attached to it, with (1) an indication of the date of minimum durability; (2) an indication of the maximum period during which it is advisable to store it; (3) an indication of the temperature at which, and or the equipment in which it is advisable to store it; (4) a reference allowing identification of the batch to which it belongs; and (5) a clear message of the type 'do not refreeze after defrosting'⁷. Any other quick-frozen foodstuff must, in addition to the description 'quick-frozen'⁸, added to its sales name, be marked or labelled on its packaging, container or wrapping, or on a label attached to it, with a reference allowing identification of the batch to which it belongs and the name or business name and address of the manufacturer or packer, or of a person established within the European Community who places that foodstuff on the market⁹. The description 'quick-frozen' must only be used in the labelling for the purpose of the placing on the market of a quick-frozen foodstuff or a food which by virtue of that labelling becomes a quick-frozen foodstuff¹⁰.

Where, further to an inspection, an authorised officer¹¹ of an enforcement authority has reasonable grounds to believe that the temperatures that are being or have been maintained in respect of any quick-frozen foodstuff are not the prescribed temperatures¹² for such foodstuff, he must further inspect such quick-frozen foodstuff and such temperatures in accordance with the specified provisions¹³. Each food operator handling a quick-frozen foodstuff must, at the request of an authorised officer of an enforcement authority, make records required to be kept¹⁴ available to that or another authorised officer of that authority¹⁵.

If any person contravenes these provisions he is guilty of an offence¹⁶.

Each food authority¹⁷ must execute and enforce these provisions within its area¹⁸.

Corresponding provision is made with respect to Wales¹⁹.

1 'Quick-frozen foodstuff' means a product (1) comprising food which has undergone a freezing process known as 'quick-freezing' whereby the zone of maximum crystallisation is crossed as rapidly as possible, depending on the type of product; and (2) which is labelled for the purpose of placing on the market to indicate that it has undergone that process, but does not include ice-cream or any other edible ice: Quick-frozen Foodstuffs (England) Regulations 2007, SI 2007/191, reg 2(1).

2 See SI 2007/191 (NOTE 1), which implements EC Commission Regulation 37/2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption.

3 SI 2007/191 reg 3, Sch 2.

4 Ibid reg 4.

5 Ibid reg 6.

6 The equivalents in other languages are set out in EC Council Directive 89/108 art 8.1(a): see SI 2007/191 reg 5(3).

7 Ibid reg 5(1), (3).

8 The equivalents in other languages are set out in Directive 89/108 art 8.1(a): see SI 2007/191 reg 5(4).

9 Ibid reg 5(1), (4).

10 Ibid reg 5(2).

11 'Authorised officer' in relation to an enforcement authority, means any person, whether or not an officer of the authority, who is authorised by them in writing, either generally or specially, to act in

matters arising under these provisions; 'enforcement authority' means the authority which, by virtue of *ibid* reg 9(5) (see NOTE 18) is responsible for executing and enforcing these provisions: reg 2(1).

12 *Ibid* reg 9(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 9(1). As to the standard scale see PARA 242 note 18. The presumptions and defences under the Food Safety Act 1990 s 3 (presumptions that food is intended for human consumption) (see PARA 282), s 20 (offence due to fault of another person) (see PARA 461), s 21 (defence of due diligence) (see PARA 465), s 30(8) (which relates to documentary evidence) (see PARA 269), s 33 (obstruction etc of officers) (see PARA 271), s 35 (punishment of offences) (see PARA 468), s 36 (offences by bodies corporate) (see PARA 460), s 44 (protection of officers acting in good faith) (see PARA 272), s 58(1) (which relates to territorial waters) (see PARA 206) apply: SI 2007/191 reg 10.

13 *Ibid* reg 7, Sch 2 para 1(e), (f).

14 *Ie* under EC Commission Regulation 37/2005.

15 SI 2007/191 reg 8.

16 *Ibid* reg 7. The provisions referred to are those of EC Commission Directive 92/2.

17 'Food authority' has the meaning it bears by virtue of the Food Safety Act 1990 s 5(1) (see PARA 251), except that it does not include the appropriate Treasurer referred to in s 5(1)(c), which deals with the Inner Temple and Middle Temple: SI 2007/191 reg 2(1).

18 *Ibid* reg 9(5).

19 See Quick-frozen Foodstuffs (Wales) Regulations 2007, SI 2007/389.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/6. PARTICULAR FOODS/455. Wine and grape must.

455. Wine and grape must.

The regulation of the marketing of wine and grape must is contained in a considerable body of European legislation, referred to collectively as the Common Organisation of the Market in Wine¹.

The common organisation of the market of wine applies to grape juice, grape must, wine of fresh grapes, wine vinegar, piquette, wine lees and grape marc². There are controls in place in relation to products made within the European Union and those from outside, which govern the names that may be used for wines (including names indicating a particular quality or place of origin), what must be stated in the labelling of wine, what further information is permitted (including statements as to method of production, place of origin and vintage), what statements may not be made (even if true), and prescribe grape varieties, maximum yields, methods of production, permitted and banned ingredients, alcoholic strength, and methods of inspection and analysis³. The provisions also forbid the use of a wide variety of prescribed names in connection with other products even if such descriptions are qualified by words such as 'style', 'method' and 'imitation'⁴.

There are United Kingdom provisions which govern the circumstances in which the description 'medium dry' may be used for wine⁵, prohibit the use of a geographical ascription for a table wine produced in the United Kingdom unless the wine is produced wholly from specified varieties of grapes which have been harvested in the geographical unit concerned⁶, and permit the use of the description 'regional wine' in respect of specified table wine originating from the United Kingdom⁷. The provisions prescribe grape varieties⁸, maximum yield⁹, alcoholic strength¹⁰ and regional names¹¹ for quality wines. There are limited exceptions in relation to labelling of wine being transported during production¹² and in relation to planting of vines¹³.

Authorised officers have power to inspect premises and vehicles and to inspect and copy documents¹⁴ and to control and consent to movement of controlled wine-sector products¹⁵. Obstruction of officers is an offence¹⁶. It is an offence to contravene or fail to comply with the provisions relating to geographical names for table wines or any of the specified European provisions on the common organisation of the market in wine¹⁷.

Any person who, knowing a wine-sector product to be a controlled one, moves it or causes it to be moved without the written consent of an authorised officer or removes from it or causes to be removed from it a label affixed by such an officer indicating that its movement is controlled or who fails to comply with an undertaking given to an authorised officer to move or not to move a controlled wine-sector product, is guilty of an offence¹⁸.

There is a defence of due diligence in relation to most of these offences¹⁹.

Enforcement of these provisions is shared between the Minister of Agriculture, Fisheries and Food²⁰, or in relation to Wales, the National Assembly for Wales²¹, the Commissioners of Customs and Excise²² and the Wine Standards Board of the Vintners' Company²³.

1 The European legislation is so extensive that even an outline account is beyond the scope of this work, so in consequence, the main provisions are merely listed and a general outline of the typical contents of such regulations is given. The most important pieces of European legislation are: EEC Commission Regulation 1618/70 (OJ L175, 8.8.70, p 17) on measures for controlling the sweetening of table wines and of quality wines produced in specified regions; EEC Commission Regulation 2805/73 (OJ L289, 16.10.73, p 21) determining a list of white quality wines, produced in specified regions and of imported white quality wines containing a certain percentage of sulphur dioxide and laying down certain transitional provisions relating to the percentage of sulphur dioxide in wines produced before 1 October 1973 (as amended); EEC Commission Regulation 1972/78

(OJ L226, 17.8.78, p 11) laying down detailed rules on oenological practices (as amended); EEC Council Regulation 822/87 (OJ L84, 27.3.87, p 1) on the common organisation of the market in wine (as amended); EEC Council Regulation 823/87 (OJ L84, 27.3.87, p 59) laying down special provisions relating to quality wines produced in specified regions (as amended); EEC Council Regulation 2048/89 (OJ L202, 14.7.89, p 32) laying down general rules on controls in the wine sector; EEC Council Regulation 2390/89 (OJ L232, 9.8.89, p 7) laying down general rules for the import of wines, grape juice and grape must (as amended); EEC Council Regulation 2392/89 (OJ L232, 9.8.89, p 13) 1989 laying down general rules for the description and presentation of wines and grape musts (as amended); EEC Council Regulation 3677/89 (OJ L360, 9.12.89, p 1) on the total alcoholic strength by volume and the total acidity of certain imported quality wines (as amended); EEC Commission Regulation 3201/90 (OJ L309, 8.11.90, p 1) laying down detailed rules for the description and presentation of wines and grape musts (as amended); EEC Council Regulation 1601/91 (OJ L149, 14.6.91, p 1) laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails (as amended); EEC Council Regulation 3895/91 (OJ L368, 31.12.91, p 15) laying down rules for the description and presentation of special wines; EEC Council Regulation 2332/92 (OJ L231, 13.8.92, p 1) on sparkling wines produced in the Community (as amended); EEC Council Regulation 2333/92 (OJ L231, 13.8.92, p 9) laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (as amended); EEC Commission Regulation 2238/93 (OJ L200, 10.8.93, p 10; corrigendum at OJ L301, 8.12.93, p 29) on the accompanying documents for the carriage of wine products and the relevant records to be kept (as amended); EC Commission Regulation 122/94 (OJ L21, 26.1.94, p 7) laying down certain detailed rules for the application of EC Council Regulation 1601/91 (OJ L149, 14.6.91, p 1); and EC Commission Regulation 554/95 (OJ L56, 14.3.95, p 3) laying down detailed rules for the description and presentation of sparkling and aerated sparkling wines (as amended). These regulations are implemented in England by the Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696 (as amended).

2 EC Council Regulation 822/87 (OJ L84, 27.3.87, p 1), art 1.2.

3 See note 1 *supra*.

4 See note 1 *supra*.

5 See the Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 4.

6 *Ibid* reg 5, Sch 3 (amended by SI 1997/542; SI 1998/543; and SI 1999/482). For the meaning of 'United Kingdom' see PARA 206 note 1 *ante*.

7 Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 5A, Sch 3A (both added by SI 1997/542).

8 Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 16, Sch 5 (amended by SI 1998/543).

9 Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 19.

10 *Ibid* reg 17.

11 *Ibid* reg 15, Sch 4 (amended by SI 1998/543).

12 Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 6.

13 *Ibid* reg 7.

14 *Ibid* reg 8.

15 *Ibid* regs 9, 10.

16 *Ibid* reg 23. Any person guilty of such an offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: reg 23. As to the standard scale see PARA 242 note 18 *ante*.

17 *Ibid* reg 21, Sch 2 (amended by SI 1997/542; SI 1998/453; and SI 1999/482). Any person guilty of such an offence is liable on conviction to a fine: Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 21. Depending on the severity of the offence, the person charged is either liable on summary conviction to a fine not exceeding the statutory maximum or to a fine not exceeding level 4 on the standard scale, or is liable on conviction on indictment to a fine: reg 21. As to the statutory maximum see PARA 261 note 22 *ante*. In certain circumstances, an officer of a body corporate may be liable: reg 24.

18 *Ibid* reg 22. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 22(5). It is a defence in relation to the movement offences that, when the prohibition on movement was imposed, no offence had been committed in respect of the product concerned

and there was a reasonable excuse for the act or omissions in respect of which the person is charged: reg 22(4).

19 In any proceedings for an offence under *ibid* reg 21 (see the text and note 17 *supra*) or reg 23(b) (see the text and note 16 *supra*) it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control: reg 25.

20 As to the Minister of Agriculture, Fisheries and Food see PARA 224 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

21 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

22 As to the Commissioners of Custom and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 *et seq*.

23 See the Common Agricultural Policy (Wine) Regulations 1996, SI 1996/696, reg 3.

UPDATE

455 Wine and grape must

TEXT AND NOTES--SI 1996/696 now the Wine Regulations 2009, SI 2009/386, and the Common Agricultural Policy (Wine) (Wales) Regulations 2001, SI 2001/2193 (amended by SI 2003/1776, SI 2004/2599, SI 2006/1716, SI 2007/2333).

NOTE 3--See *Mezzacorona Trade Mark* [2003] EWCA Civ 1861, [2004] RPC 537 (even though trade mark was confusingly similar to the place name Mezzacorona, it was not a place name and therefore did not infringe EC Council Regulation 2392/89); and *R (on the application of Sovio Wines Ltd) v Food Standards Agency* [2009] EWHC 382 (Admin), (2009) Times, 9 April (use of unapproved production method justified imposition of movement control order).

TEXT AND NOTE 23--For 'the Wines Standards Board of the Vintners' Company' read 'the Food Standards Agency' so that the Agency is responsible for the enforcement functions under the Common Agricultural Policy (Wine) (Wales) Regulations 2001, SI 2001/2193. See TEXT AND NOTES. As to the Food Standard Agency see PARA 225 *et seq*.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/456. Power of enforcement authorities to prosecute.

7. PROCEEDINGS AND PENALTIES

(1) PROSECUTIONS

456. Power of enforcement authorities to prosecute.

An enforcement authority¹ in England and Wales may institute proceedings under any provisions of the Food Safety Act 1990 or any regulations or orders made under it². The Secretary of State³ may take over the conduct of any such proceedings which have been instituted by some other person⁴ and may direct the Food Standards Agency⁵ to take over the conduct of any such proceedings which have been instituted by some person other than the Agency⁶. If the Agency has not been so directed to take over the conduct of any such proceedings it may only do so with the consent of the person who instituted the proceedings⁷.

1 For the meaning of 'enforcement authority' see PARA 222 ante.

2 Food Safety Act 1990 s 6(5) (amended by the Food Standards Act 1999 s 40(1), (4), Sch 5 para 10(1), (4), Sch 6).

3 As to the Secretary of State see PARA 224 ante.

4 Food Safety Act 1990 s 6(5A) (s 6(5A)-(5C) added by the Food Standards Act 1999 Sch 5 para 10(1), (4)).

5 As to the establishment of the Food Standards Agency see PARA 225 ante.

6 Food Safety Act 1990 s 6(5B) (as added: see note 4 supra).

7 Ibid s 6(5C) (as added: see note 4 supra).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/457. Power of private persons and officers to prosecute.

457. Power of private persons and officers to prosecute.

Any private purchaser of an article of food¹ or a drug may take proceedings against an offender². An authorised officer may institute a prosecution without authority from his local authority as a private purchaser³. A member or an officer of a local authority may be authorised to prosecute, defend or appear in proceedings on its behalf in a magistrates' court⁴.

Prosecutions may be instituted on behalf of a local authority either in the name of the authority⁵ or in the name of the authorised officer⁶, and where power to institute proceedings generally is delegated to an officer, he may exercise the authority's decision of deciding against whom the proceedings are to be taken⁷.

1 For the meaning of 'food' see PARA 201 ante.

2 *Bob Keats Ltd v Farrant* [1951] 1 All ER 899, DC; *Snodgrass v Topping* (1952) 116 JP 332, DC; *Rye v Williams Miles & Co* (1963) 107 Sol Jo 891, DC; and see *Buckler v Wilson* [1896] 1 QB 83, DC; *Falconer v Whyte* 1908 SC (J) 40.

3 *Giebler v Manning* [1906] 1 KB 709, DC; *Snodgrass v Topping* (1952) 116 JP 332, DC; and see *Connor v Butler* [1902] 2 IR 569. The cases relate to 'sampling officers' who have been replaced by 'authorised officers': see PARA 253 ante.

4 See the Local Government Act 1972 s 223 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 573. The person authorised must be a member or officer of that council: see *Oberst v Coombs* (1955) 53 LGR 316, DC (police inspector wrongly authorised).

5 See eg *J Miller Ltd v Battersea Borough Council* [1956] 1 QB 43, [1955] 3 All ER 279, DC.

6 See eg *Snodgrass v Topping* (1952) 116 JP 332, DC; and also *James v Stein* (1946) 110 JP 279, DC (where the extent of the authority delegated to the officer was in issue); and cf *Ross v Helm* [1913] 3 KB 462, DC (where formal proof of an inspector's authority was held not to be required as a condition precedent to the prosecution); *Hale v Cole* (1891) 55 JP 376.

7 *James v Stein* (1946) 110 JP 279, DC.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/458. Nature of the proceedings.

458. Nature of the proceedings.

All offences under the Food Safety Act 1990 are triable either way, with the exception of the offences of intentional obstruction or failure to assist any person acting in execution of the Act¹, which are triable summarily only². The relevant amounts for fines are prescribed by the Act³. Additional penalties are available for persons who are convicted of an offence under the Food Safety Act 1990 and who are licensed under the Slaughterhouses Act 1974⁴ to keep a knacker's yard⁵.

1 See the Food Safety Act 1990 s 33(1); and PARA 271 ante. As to offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1102-1103, 1105 et seq.

2 See *ibid* s 35(1), (2); and PARA 468 post. As to summary trial see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1104; MAGISTRATES.

3 See *ibid* s 35(3); and PARA 468 post.

4 See the Slaughterhouses Act 1974 s 1 (as amended) (see PARA 479 post).

5 See the Food Safety Act 1990 s 35(4) (as amended); and PARA 468 post. For the meaning of 'knacker's yard' see PARA 201 note 3 ante.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/459. Time limit for prosecutions.

459. Time limit for prosecutions.

A prosecution for an offence under the Food Safety Act 1990¹, other than the offence of intentional obstruction or failure to assist any person acting in execution of the Act², may not be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier³. In relation to the offence of intentionally obstructing or failing to assist an authorised officer⁴, like most of the offences under regulations made under the Food Safety Act 1990, proceedings must be begun within six months of the commission of the offence⁵.

1 Ie an offence which is punishable under the Food Safety Act 1990 s 35(2): see PARA 468 post.

2 Ie an offence punishable under *ibid* s 35(1): see PARA 468 post.

3 *Ibid* s 34. Offences may be continuing offences committed afresh each day, for example in breaches of regulations as to hygiene, in which case time does not start to run until the offence ceases: *R v Thames Metropolitan Stipendiary Magistrate, ex p Hackney London Borough Council* (1993) 158 JP 305, 92 LGR 392, DC. A delayed prosecution may be struck out as an abuse of the process of the court, even if it is within the statutory time limit: *Daventry District Council v Ollins* (1990) 154 JP 478, [1990] Crim LR 414, DC.

4 See the Food Safety Act 1990 s 33(1); and PARA 271 ante.

5 This is because no time limit is specified in relation to the offence and so a time limit is provided by the Magistrates' Courts Act 1980 s 127: see MAGISTRATES.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/460. Offences by corporations.

460. Offences by corporations.

Where an offence under the Food Safety Act 1990 or under any regulations made under it¹ which has been committed by a body corporate is proved to have been committed with the consent or connivance² of, or to be attributable to any neglect on the part of, any director³, manager, secretary or other similar officer⁴ of that body, or any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly⁵.

1 See, for example, the Food Labelling Regulations 1996, SI 1996/1499, reg 48 (as amended); and PARA 373 note 5 ante.

2 'Consent' implies knowledge: see *Re Caughey, ex p Ford* (1876) 1 ChD 521 at 528, CA, per Jessel MR. As to 'connivance' see *Boulting v Boulting* (1864) 3 Sw & Tr 329 at 335 per Sir James Wilde; and *Churchman v Churchman* [1945] P 44 at 51, [1945] 2 All ER 190 at 194-195, CA, per Lord Merriman.

3 'Director', in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: Food Safety Act 1990 s 36(2).

4 See *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705, HL; *Allen v Whitehead* [1930] 1 KB 211, DC; *DPP v Kent and Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119, DC; *Moore v I Bresler Ltd* [1944] 2 All ER 515, DC; and *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA. See also *Registrar of Restrictive Trading Agreements v WH Smith & Son Ltd* [1969] 3 All ER 1065, [1969] 1 WLR 1460, CA (shop branch manager not a 'manager' or 'officer' of the company owning the shop); and *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL (a 'manager' is the one who has management of the whole business of the company; 'officer' has a similar connotation). For the meaning of 'officer' see PARA 244 note 6 ante.

5 Food Safety Act 1990 s 36(1).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(1) PROSECUTIONS/461. Offences due to the fault of another person.

461. Offences due to the fault of another person.

Where the commission by any person of certain offences under the Food Safety Act 1990¹ is due to an act or default of some other person, that other person is guilty of the offence, and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person².

1 Ie under the Food Safety Act 1990 ss 7-19 (as amended): see PARA 282 et seq ante. These are as follows: offences of rendering food injurious to health (see s 7; and PARA 282 ante), selling food not complying with food safety requirements (see s 8; and PARA 283 ante), selling food not of the nature, substance or quality demanded (see s 14; and PARA 360 ante), and falsely describing or presenting food (see s 15; and PARA 372 ante).

2 Ibid s 20. An employee of the principal can be 'some other person' for the purposes of this rule: *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL (a case under a similar provision in the Trade Descriptions Act 1968). Where proceedings are brought against both persons, inquiries must be made against each of them whether they consent to summary trial or wish to be tried by a jury: *R v Uxbridge Justices, ex p Gow*; *R v Uxbridge Justices, ex p Co-operative Retail Services* (1985) 150 JP 154, 84 LGR 374, DC.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(2) EVIDENCE/462. Certificate of food analyst or food examiner.

(2) EVIDENCE

462. Certificate of food analyst or food examiner.

In any proceedings under the Food Safety Act 1990, the production by one of the parties: (1) of a document purporting to be a certificate¹ given by a food analyst² or examiner³; or (2) of a document supplied to him by the other party as being a copy of such a certificate, is sufficient evidence⁴ of the facts stated in it unless, in a case falling within head (1) above, the other party requires the analyst to be called as a witness⁵. In the absence of evidence to contradict or qualify the certificate, the court must accept and act upon it⁶. If, however, the analyst has given reasons for his conclusion which in the court's opinion, do not support his conclusion, the court may reject his conclusion⁷. It is also open to the defendant to call evidence to contradict or qualify the analyst's certificate⁸, even if the analyst himself is not called⁹.

1 Except in so far as statutes so provide, a certificate is not generally of itself evidence: see *Tyler v Kingham & Son Ltd* [1900] 2 QB 413 at 417 per Ridley J (a decision under the Sale of Food and Drugs Act 1875 s 21 (now repealed) in which a certificate was held to be evidence only against the person from whom the sample was obtained; the wording in the corresponding provision in the Food Safety Act 1990 s 30(8) (see the text to note 5 infra), is different and that decision would appear to be no longer applicable). As to the admissibility of official certificates see CIVIL PROCEDURE vol 11 (2009) PARAS 896-897.

2 For the meaning of 'food analyst' see PARA 267 note 13 ante. For the meaning of 'food examiner' see PARA 267 note 7 ante.

3 Ie under the Food Safety Act 1990 s 30(6): see PARA 269 ante.

4 If it is the only evidence before the justices it should be treated as conclusive: *Harrison v Richards* (1881) 45 JP 552, DC; and see *Robinson v Newman* (1917) 86 LJB 814, DC; *Broughton v Whittaker* [1944] KB 269, [1944] 2 All ER 544, DC. See, however, *Hewitt v Taylor* [1896] 1 QB 287, DC (analyst's certificate is not conclusive if there is evidence to meet it on the other side); followed in *Preston v Fennell* [1951] 1 KB 16, [1950] 1 All ER 1099, DC; and *Williams v Hurrells Stores Ltd* [1954] Crim LR 543, DC. As to cases in which an analyst's certificate was successfully challenged see eg *Collins Arden Products Ltd v Barking Corp* [1943] KB 419, [1943] 2 All ER 249, DC; *Marston v Loney* [1955] Crim LR 778, DC (decision based on revoked regulations made under the Food and Drugs Act 1938 s 3); *Thruswell v Whiteman* [1956] Crim LR 195, DC. As to the evidential effect of certificates declared by statute to be sufficient evidence see CIVIL PROCEDURE vol 11 (2009) PARA 897.

5 Food Safety Act 1990 s 30(8). If the analyst is called as a witness, the certificate ceases to be evidence and the court must consider whether his evidence is sufficient to prove the offence: *S Stone & Sons (Hounslow) Ltd v Pugh* [1949] 1 KB 240, [1948] 2 All ER 818, DC. See also *McCulloch v Hannam* [1951] 1 All ER 402n, DC.

6 *Harrison v Richards* (1881) 45 JP 552, DC; *Elder v Dryden* (1908) 72 JP 355; *Robinson v Newman* (1917) 81 JP 187; *Kings v Merris* [1920] 3 KB 566; *Chalmers v M'Meeking* 1921 JC 54; *Bowker v Woodroffe* [1928] 1 KB 217, DC; *Preston v Jackson* (1928) 73 Sol Jo 712; *Broughton v Whittaker* [1944] KB 269, [1944] 2 All ER 544, DC (distinguishing *Collins Arden Products Ltd v Barking Corp* [1943] KB 419, [1943] 2 All ER 249, DC (a case 'exceptional' in many circumstances: see at 421 and 250 per Charles J)); but see *R v Field etc Justices, ex p White* (1895) 64 LJMC 158, DC (where the justices, relying upon their own special knowledge of facts conflicting with the analyst's opinion, refused to convict and were upheld by the Divisional Court); and *Shortt v Robinson* (1899) 68 LJB 352, DC (where the analyst was called and cross-examined, but no contrary evidence was called, and it was held that the justices were entitled to bring their own knowledge of the article to bear on the question and to reject the analyst's conclusions). See also *Macleod v O'Neil* (1882) 4 Couper 629. The decisions in *R v Field etc Justices* supra and *Shortt v Robinson* supra were adversely commented upon by Sherman J in *Bowker v Woodroffe* supra, and run counter to the main line of authority. It is submitted, however, that cases may yet arise, though rarely, in which justices might be possessed of special knowledge which would justify them in declining to act on the certificate, though uncontradicted, but in any such case the facts of which the justices have special knowledge should be disclosed so that the parties may deal with them: *Keane v Mount Vernon Colliery Co Ltd* [1933] AC 309, HL. As to the right, in general, of persons acting in a judicial capacity to

bring their own knowledge of affairs into the consideration of questions see CIVIL PROCEDURE vol 11 (2009) PARAS 779, 788.

7 *Marston v Loney* [1955] Crim LR 778, DC. The analyst's opinion was based, inter alia, upon the fact that a food order had prescribed a higher proportion of pork in pork sausages. As it had already been decided that such a standard was inapplicable (*Thomas Robinson, Sons & Co Ltd v Allardice* (1944) 170 LT 297, DC; *Highnam v Turier* [1951] 2 All ER 850, DC), the court could reject his opinion on the analogy of a 'speaking order' in certiorari proceedings when the reasoning was wrong.

8 *Hewitt v Taylor* [1896] 1 QB 287, DC; *Todd v Cochrane* 1901 38 Sc LR 801 at 804; *Preston v Fennell* [1951] 1 KB 16, [1950] 1 All ER 1099, DC. In general, a defendant who wishes to dispute this certificate should give notice requiring the analyst's attendance, though if he does and fails in his contention, he may have to pay the increased costs; but, if he does not, he may be met with an application by the prosecution for an adjournment at his expense so that the analyst may be called to support his certificate.

9 See *Hewitt v Taylor* [1896] 1 QB 287 at 289, DC, per Lindley LJ (the certificate is sufficient only where there is no evidence to the contrary). See also *Preston v Fennell* [1951] 1 KB 16, [1950] 1 All ER 1099, DC.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(2) EVIDENCE/463. Presumption that food is intended for human consumption.

463. Presumption that food is intended for human consumption.

Any food¹ commonly used for human consumption², if sold or offered, exposed or kept for sale³, is presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption⁴. Additionally, any food found on premises⁵ used for the preparation⁶, storage or sale of that food, and any article or substance⁷ commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or sale of that food, is presumed, until the contrary is proved, to be intended for sale, or for manufacturing food for sale, for human consumption⁸. Similarly, any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared is presumed, until the contrary is proved, to be intended for such use⁹.

1 For the meaning of 'food' see PARA 201 ante.

2 For the meaning of 'human consumption' see PARA 201 note 3 ante.

3 For the meaning of 'sale' see PARA 262 note 5 ante.

4 See the Food Safety Act 1990 s 3(2); and PARA 282 ante.

5 For the meaning of 'premises' see PARA 204 note 16 ante.

6 For the meaning of 'preparation' see PARA 201 note 3 ante.

7 For the meaning of 'substance' see PARA 201 note 4 ante.

8 See the Food Safety Act 1990 s 3(3); and PARA 282 ante. See also *Hooper v Petrou* (1973) 71 LGR 347, DC, where Christmas puddings apparently contaminated by mice in a restaurant's dry goods store were presumed to be intended for sale for human consumption despite the defence plea that, when required, they would have been examined and, if found unfit, discarded.

9 See the Food Safety Act 1990 s 3(4); and PARA 282 ante.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(2) EVIDENCE/464. Sending sample to the Government Chemist.

464. Sending sample to the Government Chemist.

An authorised officer¹ who has retained part of a sample² must submit it to the Government Chemist (or such other food analyst³ as the Government Chemist may direct) for analysis⁴ if he and the owner so agree or a court so orders⁵.

1 For the meaning of 'authorised officer' see PARA 253 ante.

2 As to the retention of part of a sample see PARA 264 ante.

3 For the meaning of 'food analyst' see PARA 267 note 13 ante.

4 For the meaning of 'analysis' see PARA 264 note 7 ante.

5 See the Food Safety (Sampling and Qualifications) Regulations 1990, SI 1990/2463, reg 7; and PARA 265 ante. It is submitted that the provisions as to certificates of analysis by food analysts and food examiners apply to analysis by, or under direction of, the Government Chemist: see the Food Safety Act 1990 s 30(6)-(8); and PARA 462 ante.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(3) DEFENCES/(i) Due Diligence/465. Defence of due diligence under the Food Safety Act 1990.

(3) DEFENCES

(i) Due Diligence

465. Defence of due diligence under the Food Safety Act 1990.

The defence of due diligence is well established in many areas of trading law¹. However, it was only introduced to food law by the Food Safety Act 1990². The previous food law defences of act or default of another and of warranty no longer exist³.

The defence of due diligence applies to certain offences under the Food Safety Act 1990⁴ and to many offences under regulations made under it⁵. It is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control⁶. A person⁷ charged with the offence of selling food not complying with food safety requirements⁸, selling food not of the nature or substance or quality demanded⁹, or falsely describing or presenting food¹⁰ who neither prepared the food in respect of which the offence is alleged to have been committed, nor imported it into Great Britain is taken to have established the defence of due diligence if he satisfies the requirements in either heads (1)(a) to (c) or heads (2)(a) to (c) below¹¹.

In order to establish one of these special cases of due diligence:

378 (1) a person must prove¹² either:

3

7. (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person¹³;
8. (b) that he carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him¹⁴; and
9. (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision¹⁵; or

4

379 (2) a person must prove¹⁶:

5

10. (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person¹⁷;
11. (b) that the sale¹⁸ or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark¹⁹; and
12. (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision²⁰.

6

If, in any case, the defence of due diligence involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied

by another person, the person charged is not, without leave of the court, entitled to rely on that defence unless at least seven clear days before the hearing, and where he has previously appeared before a court in connection with the alleged offence within one month of his first such appearance, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession²¹.

1 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 504.

2 Ie by the Food Safety Act 1990 s 21: see the text and notes 6-21 infra. For the purposes of s 13 (emergency control orders) (see PARA 288 ante), s 21(1), (5), (6) came into force on 3 July 1990 (see the Food Safety Act 1990 (Commencement No 1) Order 1990, SI 1990/1383), and for all other purposes the Food Safety Act 1990 s 21 came into force on 1 January 1991 (see the Food Safety Act 1990 (Commencement No 2) Order 1990, SI 1990/2372).

3 Ie under the Food and Drugs Act 1955 ss 113, 115 (both repealed).

4 Ie the Food Safety Act 1990 Pt II (ss 7-20) (as amended). These are as follows: offences of rendering food injurious to health (see s 7; and PARA 282 ante), selling food not complying with food safety requirements (see s 8; and PARA 283 ante), selling food not of the nature, substance or quality demanded (see s 14; and PARA 360 ante) and falsely describing or presenting food (see s 15; and PARA 372 ante).

5 The majority of regulations made under the Food Safety Act 1990 make express provision for the application of the due diligence defence to offences under those regulations: see eg the Food Labelling Regulations 1996, SI 1996/1499, reg 48 (as substituted).

6 See the Food Safety Act 1990 s 21(1), which is expressed to be subject to s 21(5): see the text and note 21 infra. See also *R v Bow Street Magistrates' Court, ex p Cow and Gate Nutrition plc* (1994) 159 JP 120, DC (existence of bone in baby food was not evidence that manufacturer did not exercise due diligence).

7 Such a person must neither have prepared the food in respect of which the offence is alleged to have been committed, nor imported it into Great Britain: Food Safety Act 1990 s 21(2). For the meaning of 'preparation' see PARA 201 note 3 ante. For the meaning of 'food' see PARA 201 ante. For these purposes, 'importation' has the same meaning as in the Customs and Excise Management Act 1979 s 1(1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 964), and 'import' must be construed accordingly: Food Safety Act 1990 s 53(1). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

8 Ie ibid s 8; and PARA 283 ante.

9 Ie ibid s 14; and PARA 360 ante.

10 Ie ibid s 15; and PARA 372 ante.

11 Ibid s 21(2), which is expressed to be without prejudice to the generality of s 21(1): see the text and note 6 supra.

12 In effect, this enables a retailer or wholesaler to establish a defence if he made all reasonable checks or it was reasonable to rely on checks by the manufacturer unless he had reason to suspect an offence.

13 Food Safety Act 1990 s 21(3)(a). It is unnecessary to prove that the act or default involved mens rea or negligence and so the mere selling of an item which is of insufficient quality is an act or default to which this kind of provision applies: *Lamb v Sunderland and District Creamery Ltd* [1951] 1 All ER 923, 115 JP 300, DC. Proof of the act or default of another person is necessary so it is not sufficient to show that the other person may have been responsible and that the defendant is clearly innocent: *Moore v Ray* [1951] 1 KB 98, [1950] 2 All ER 561, DC. It is not necessary for the defendant to identify the precise person responsible but he must apparently prove that all reasonable steps have been taken to investigate who was responsible for the offence: *McGuire v Sittingbourne Co-operative Society Ltd* [1976] Crim LR 268, 140 JP 306, DC. The person to whose act or default the commission of the offence is alleged to be due, does not have to be concerned in the sale of food: *Meah v Roberts* [1978] 1 All ER 97, [1977] 1 WLR 1187, DC.

14 Food Safety Act 1990 s 21(3)(b).

15 Ibid s 21(3)(c).

16 In effect, this enables a retailer or wholesaler of food other than 'own-label' food to rely, without making checks, on the manufacturer, unless he had reason to know of an offence.

17 Food Safety Act 1990 s 21(4)(a). It is unnecessary to prove that the act or default involved mens rea or negligence: see note 13 supra. The person to whose act or default the commission of the offence is alleged to be due, does not have to be concerned in the sale of food: *Meah v Roberts* [1978] 1 All ER 97, [1977] 1 WLR 1187, DC.

18 For the meaning of 'sale' see PARA 265 note 5 ante.

19 Food Safety Act 1990 s 21(4)(b).

20 Ibid s 21(4)(c).

21 Ibid s 21(5). See also *Carrick District Council v Taunton Vale Meat Traders Ltd* (1994) 158 JP 347, 92 LGR 335, DC. Any reference to appearing before a court must be construed as including a reference to being brought before a court: Food Safety Act 1990 s 21(6).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

465 Defence of due diligence under the Food Safety Act 1990

TEXT AND NOTES 7, 8--Now a person charged with the offence of selling food not complying with food safety requirements can no longer be taken to have established the defence of due diligence subject to the specified conditions: 1990 Act s 21(2) (amended by SI 2004/3279).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(3) DEFENCES/(i) Due Diligence/466. Defence of due diligence under other enactments.

466. Defence of due diligence under other enactments.

As the defence of due diligence was only introduced into food law by the Food Safety Act 1990¹, much of the case law relates to other statutes which contain a defence in similar terms, in particular the Trade Descriptions Act 1968 and its predecessors².

Whether the defence is made out is a question of fact, not of law³. Each case depends on its own facts and circumstances⁴. The courts have emphasised that all due diligence and all reasonable precautions are strong words⁵. It is for the defendant to prove, on the balance of probabilities that the defence is made out⁶. In the case of a company, the persons who must have exercised the due diligence are those who can be identified with the controlling mind of the company, for example directors or senior controlling managers. A manager of one of a chain of supermarkets cannot be identified with the company for this purpose, and thus his default does not deprive the company of the defence⁷.

A company with many shops is required to do no more than devise a proper system to ensure that the law is complied with, to set up a good arrangement for ensuring a regular check on the carrying out of the system, and to properly select, instruct and supervise staff⁸. It may be exercising all due diligence to rely on a third party⁹. If a system of tests is adopted, the number of tests must be sufficient and the results must be reported and properly considered¹⁰.

1 See PARA 465 ante.

2 See SALE OF GOODS AND SUPPLY OF SERVICES.

3 *RC Hammett Ltd v Crabb*, *RC Hammett Ltd v Beldam* (1931) 95 JP 180, DC.

4 *Amos v Melcon (Frozen Foods) Ltd* (1985) 149 JP 712, DC.

5 *Amos v Melcon (Frozen Foods) Ltd* (1985) 149 JP 712, DC; *Garrett v Boots The Chemists Ltd* (1980, unreported), DC.

6 *Amos v Melcon (Frozen Foods) Ltd* (1985) 149 JP 712, DC.

7 *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL, overruling *RC Hammett Ltd v LCC* (1933) 97 JP 105, DC. See also *Sun Life Assurance Co of Canada v WH Smith & Son Ltd* (1933) 150 LT 211, CA.

8 *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL; *Amos v Melcon (Frozen Foods) Ltd* (1985) 149 JP 712, DC; *Knowsley Metropolitan Borough Council v Cowan* (1991) 156 JP 45, DC.

9 *Carrick District Council v Taunton Vale Meat Traders Ltd* (1994) 158 JP 347, DC, where meat processors were acquitted of selling food not satisfying food safety requirements contrary to the Food Safety Act 1990 s 8 when they had relied on the fact that an authorised meat inspector employed by a local authority had stamped meat as fit for human consumption and the company had no reason to suspect the inspector's competence.

10 See eg *Rotherham Metropolitan Borough Council v Raysun (UK) Ltd* (1988) 153 JP 37, DC (testing one packet of crayons from a batch of 10,800 dozen packets to assess compliance with legal standard for lead content held insufficient by magistrates); *Dudley Metropolitan Borough Council v Roy Firmin Ltd* (1992, unreported), DC (testing two imported cushions out of 4,728 to assess compliance with legal standard for fire resistance held insufficient by magistrates); *Bibby-Cheshire v Golden Wonder Ltd* [1972] 3 All ER 738, [1972] 1 WLR 1487, DC (20 million bags of crisps filled a week, magistrates found that even the best machinery could not prevent some underweight bags, economically impossible to weigh all bags individually, efficient system of random checking; held due diligence defence made out).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(3) DEFENCES/(ii) Defence for Publishers of Advertisements/467. Defence of publication of advertisement in course of business.

(ii) Defence for Publishers of Advertisements

467. Defence of publication of advertisement in course of business.

In proceedings for an offence under certain provisions of Part II of the Food Safety Act 1990¹ consisting of the advertisement² for sale³ of any food⁴, it is a defence for the person charged to prove: (1) that it is his business to publish or arrange for the publication of advertisements; and (2) that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence⁵.

1 The Food Safety Act 1990 Pt II (ss 7-21) (as amended). These are as follows: the offences of rendering food injurious to health (see s 7; and PARA 282 ante), selling food not complying with food safety requirements (see s 8; and PARA 283 ante), selling food not of the nature, substance or quality demanded (see s 14; and PARA 360 ante), and falsely describing or presenting food (see s 15; and PARA 372 ante). See note 5 infra.

2 For the meaning of 'advertisement' see PARA 225 note 5 ante.

3 For the meaning of 'sale' see PARA 262 note 5 ante.

4 For the meaning of 'food' see PARA 201 ante.

5 Food Safety Act 1990 s 22. Several regulations made under the Food Safety Act 1990 make express provision for the application of this defence to offences under those regulations: see eg the Food Labelling Regulations 1996, SI 1996/1499, reg 48 (as substituted) (see PARA 373 ante).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(4) PENALTIES/468. Fines and imprisonment.

(4) PENALTIES

468. Fines and imprisonment.

A person guilty of an offence of intentionally obstructing any person acting in the course of the Food Safety Act 1990¹, or of, without reasonable cause, failing to give to any person acting in the execution of the Act any assistance or information which that person may reasonably require of him for the performance of his functions², is liable on summary conviction to a fine not exceeding level 5 on the standard scale³, or to imprisonment for a term not exceeding three months or to both⁴.

A person guilty of any other offence under the Food Safety Act 1990 is liable on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, or on summary conviction, to a fine not exceeding the relevant amount⁵ or to imprisonment for a term not exceeding six months or to both⁶.

If a person who is: (1) licensed under the Slaughterhouses Act 1974⁷ to keep a knacker's yard⁸; or (2) licensed under that Act to use any premises as a knacker's yard⁹, is convicted of an offence under Part II of the Food Safety Act 1990¹⁰, the court may, in addition to any other punishment, cancel his licence or registration¹¹.

1 See the Food Safety Act 1990 s 33(1)(a); and PARA 271 ante.

2 See *ibid* s 33(1)(b); and PARA 271 ante.

3 As to the standard scale see PARA 242 note 18 ante.

4 Food Safety Act 1990 s 35(1).

5 The 'relevant amount' means in the case of an offence under *ibid* s 7 (see PARA 282 ante), s 8 (see PARA 283 ante) or s 14 (see PARA 360 ante), £20,000, and in any other case, the statutory maximum: s 35(3). As to the statutory maximum see PARA 261 note 22 ante.

6 *Ibid* s 35(2). The fine on summary conviction may not exceed the relevant amount: s 35(2). The provisions as to imprisonment are not applicable in the prosecution of a limited company (see *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1, DC); but as to punishment of officers guilty of connivance see PARA 460 ante.

7 *Ie* licensed under the Slaughterhouses Act 1974 s 1 (as amended): see PARA 479 post.

8 For the meaning of 'knacker's yard' see PARA 201 note 3 ante.

9 *Ie* licensed under the Slaughterhouses Act 1974 s 6 (as amended): see PARA 482 post.

10 *Ie* the Food Safety Act 1990 Pt II (ss 7-26) (as amended).

11 *Ibid* s 35(4) (amended by SI 1996/2235).

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/7. PROCEEDINGS AND PENALTIES/(5) APPEALS/469. Appeals.

(5) APPEALS

469. Appeals.

An appeal may be made to a magistrates' court by any person who is aggrieved by¹:

- 380 (1) a decision of an authorised officer² of an enforcement authority³ to serve an improvement notice⁴;
- 381 (2) a decision of an enforcement authority to refuse to issue a certificate of satisfaction in relation to a prohibition order or an emergency prohibition notice or order⁵; or
- 382 (3) a decision of such an authority to refuse, cancel, suspend or revoke a licence⁶.

Head (3) above does not apply in relation to any decision as respects which there is provision for an appeal to a tribunal⁷.

The procedure on an appeal⁸ is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings⁹. The period within which such an appeal may be brought is: (a) one month from the date on which notice of the decision was served on the person desiring to appeal¹⁰; or (b) in the case of an appeal under head (1) above, that period or the period specified in the improvement notice, whichever ends the earlier¹¹.

In any case where such an appeal lies, the document notifying the decision to the person concerned must state the right of appeal to a magistrates' court, and the period within which such an appeal may be brought¹².

An appeal may be made to the Crown Court by any person who is aggrieved by any dismissal by a magistrates' court of such an appeal¹³ or any decision of such a court to make a prohibition order¹⁴ or an emergency protection order¹⁵, or to exercise the power to cancel a licence in relation to knackers' yards¹⁶.

1 Food Safety Act 1990 s 37(1). The appeal is by way of a rehearing of the whole issue, and the court is not limited to a review of the grounds of the authority's decision: *Fulham Metropolitan Borough Council v Santilli* [1933] 2 KB 357, DC. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 For the meaning of 'authorised officer' in relation to an enforcement authority see PARA 223 ante.

3 For the meaning of 'enforcement authority' see PARA 222 ante.

4 Food Safety Act 1990 s 37(1)(a). As to improvement notices see PARA 285 ante.

5 Ibid s 37(1)(b). As to certificates issued in relation to prohibition orders see s 11(6) (see PARA 286 ante) and as to certificates issued in relation to emergency prohibition notices or orders see s 12(8) (see PARA 287 ante).

6 Ibid s 37(1)(c), which is expressed to be subject to s 37(2) (see the text to note 7 infra). Section 37(1)(c) applies to licences required by regulations made under the Food Safety Act 1990 Pt II (ss 7-26) (as amended).

7 Ibid s 37(2). There may be provision under regulations made under Pt II (as amended) for an appeal to a tribunal constituted in accordance with the regulations: see s 37(2).

8 I.e. an appeal to a magistrates' court under ibid s 37(1) or an appeal to such a court for which provision is made by regulations under Pt II (as amended): see s 37(3).

- 9 Ibid s 37(3). For the provisions of the Magistrates' Courts Act 1980 see MAGISTRATES.
- 10 Food Safety Act 1990 s 37(5)(a). In the case of such an appeal, the making of the complaint is to be deemed for the purposes of s 37(3) to be the bringing of the appeal: s 37(5).
- 11 Ibid s 37(5)(b).
- 12 Ibid s 37(6).
- 13 Ie such an appeal as is mentioned in ibid s 37(3): see the text and note 9 supra.
- 14 As to prohibition orders see PARA 286 ante.
- 15 As to emergency protection orders see PARA 247 ante.
- 16 Food Safety Act 1990 s 38. The power in relation to knackers' yards is contained in s 35(4) (as amended): see PARA 468 ante. For the meaning of 'knacker's yard' see PARA 201 note 3 ante.

UPDATE

456-469 Proceedings and Penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(1) INTRODUCTION/470. The legislation.

8. SLAUGHTERHOUSES

(1) INTRODUCTION

470. The legislation.

The Slaughterhouses Act 1974 provides for the licensing of knackers' yards¹ and their regulation², the restriction of private slaughterhouses³ and the provision and management of public slaughterhouses⁴. Regulations under the European Communities Act 1972 make provision for the humane slaughter of animals and their welfare while awaiting slaughter⁵ and the licensing of slaughtermen⁶. The licensing, supervision and control of slaughterhouses and the maintenance of strict standards of hygiene in all such premises is provided for by regulations under the Food Safety 1990⁷.

There are special provisions controlling the treatment and subsequent use and disposal of material ('special risk material') which may contain the agent containing bovine spongiform encephalopathy (BSE)⁸.

1 Slaughterhouses Act 1974 ss 1-10 (as amended): see PARAS 479-483 post.

2 Ibid s 12: see PARA 484 post.

3 Ibid s 14: see PARA 473 post.

4 Ibid ss 15-18: see PARA 474 et seq post.

5 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731 (as amended): see PARA 489 et seq post.

6 Ibid reg 4(3), Sch 1: see PARAS 486-488 post.

7 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539: see PARAS 478, 503 et seq post.

8 Specified Risk Material Order 1997, SI 1997/2964; Specified Risk Material Regulations 1997, SI 1997/2965 (as amended): see PARA 509 et seq post.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

470 The legislation

NOTE 7--SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(1) INTRODUCTION/471. Meaning of 'slaughterhouse' and 'knacker's yard'.

471. Meaning of 'slaughterhouse' and 'knacker's yard'.

'Slaughterhouse' means a place for slaughtering animals¹ whose flesh is intended for sale for human consumption, and includes any place available in connection with it for the confinement of animals while awaiting slaughter there or for keeping, or subjecting to any treatment or process, products of the slaughtering of animals there².

'Knacker's yard' means any premises used in connection with the business of slaughtering, flaying or cutting up animals the flesh of which is not intended for human consumption³.

1 'Animal' does not include bird or fish: Slaughterhouses Act 1974 s 34.

2 Ibid s 34. It is no longer necessary, as it once was, for the premises to be used habitually. Where a defendant slaughtered some sheep for human consumption on premises which had not been used for slaughtering animals for many years, it was held that the premises became a slaughterhouse as soon as animals were slaughtered there for human consumption: *East Retford District Council v Horne* [1955] Crim LR 310, DC (holding that *Perrins v Smith* [1946] KB 90, [1945] 2 All ER 706, DC, no longer applies).

Slaughterhouse operations have been held to be adapting an article for sale within the factories legislation so that the slaughterhouse was a factory and accordingly an industrial hereditament within the Rating and Valuation (Apportionment) Act 1928 s 3(1) (repealed), and thus exempt from rates under the law then in force: *Fatstock Marketing Corp'n Ltd v Morgan (Valuation Officer)* [1958] 1 All ER 646, [1958] 1 WLR 357, CA. A slaughterhouse was also held to be a factory in *Gledhill v Liverpool Abattoir Utility Co Ltd* [1957] 3 All ER 117, [1957] 1 WLR 1028, CA.

A piggery contiguous to an abattoir and used in connection with it forms part of the slaughterhouse: *Andrew Cheale Ltd v Beckett* (1974) 72 LGR 312, DC.

The provisions of the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended) do not apply to any knacker's yard forming part of an imported animals' wharf or landing place approved by the Minister under the Animal Health Act 1981 (see ANIMALS) for the purpose of the landing of imported animals: Slaughterhouses Act 1974 s 35 (amended by the Animal Health Act 1981 s 96, Sch 5 para 11; the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 11, Schedule).

3 Slaughterhouses Act 1974 s 34. To constitute a knacker's yard, the user must be regular and if used only on one occasion the premises would be outside the definition: *Perrins v Smith* [1946] KB 90, [1945] 2 All ER 706, DC. Cf the meaning of slaughterhouse in note 2 supra. It is submitted that 'slaughtering, flaying or cutting up' is to be construed disjunctively and, accordingly, premises used for only one of those operations come within the definition.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

471 Meaning of 'slaughterhouse' and 'knacker's yard'

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(1) INTRODUCTION/472. Ownership.

472. Ownership.

Slaughterhouses may be either public, namely provided and managed by a local or other authority¹, or private, namely occupied and managed by private persons.

¹ See PARAS 474-477 post.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(1) INTRODUCTION/473. Restriction of private slaughterhouses.

473. Restriction of private slaughterhouses.

Nothing in, or in any instrument made under, any local Act makes unlawful, or subjects any person to any penalty by reason of, the use of any premises as a slaughterhouse¹ or the slaughter of animals on any premises at a time when a slaughterhouse licence² is in force in respect of the premises³. However, with a view to reducing the number of slaughterhouses, a local authority⁴ may:

- 383 (1) acquire by agreement any premises in its district⁵ which are used as a slaughterhouse and discontinue the use of the premises for that purpose⁶;
- 384 (2) agree with the person interested in any premises in the district which are used as a slaughterhouse for the discontinuance of slaughtering on those premises⁷.

1 For the meaning of 'slaughterhouse' see PARA 471 ante.

2 For this purpose, 'slaughterhouse licence' means a licence issued under regulations made by virtue of the Food Safety Act 1990 s 19(1)(b) (see PARA 273 ante) for the use of any premises as a slaughterhouse: Slaughterhouses Act 1974 s 14(2) (added by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 5(3)). As to the necessity for a licence see PARA 478 post.

3 Slaughterhouses Act 1974 s 14(1) (numbered as such by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 5(3)).

4 For the meaning of 'local authority' see PARA 474 note 1 post.

5 For the meaning of 'district' see PARA 474 note 1 post.

6 Slaughterhouses Act 1974 s 14(1)(a).

7 Ibid s 14(1)(b).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

473 Restriction of private slaughterhouses

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(2) PUBLIC SLAUGHTERHOUSES/474. Power to provide public slaughterhouses.

(2) PUBLIC SLAUGHTERHOUSES

474. Power to provide public slaughterhouses.

A local authority¹ may provide² public slaughterhouses³. Any proposal by a local authority to provide a slaughterhouse within the district of another local authority requires the consent of that authority, which must not, however, be unreasonably withheld, and any dispute in the matter must be referred to and determined by the Minister⁴.

The power is exercisable either by acquiring, by purchase, lease or otherwise, or appropriating land and providing slaughterhouse facilities on it⁵, or by similarly acquiring land on which those facilities have been provided by other persons and securing their continuance⁶.

1 In the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended), 'local authority' means, as respects the City of London, the Common Council; as respects any London borough, the council of the borough; as respects any district in England, the council of the district; and as respects any county or county borough in Wales, the council of the county or county borough: Slaughterhouses Act 1974 ss 27, 34 (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 43(1), Sch 18). In relation to any premises or to an application in respect of any premises, 'local authority' means the local authority within whose district the premises are situated: Slaughterhouses Act 1974 s 34. 'District', in relation to the local authority of a London borough or the City of London, and in relation to the officers of such an authority, means the borough or the City, as the case may be, and in relation to (1) a local authority who are the council of a Welsh county or county borough; and (2) the officers of such an authority, means that county or county borough: s 34 (definition amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 43(2)).

Functions may be assigned to port health authorities or joint boards under the Public Health (Control of Disease) Act 1984 s 3 or the Public Health Act 1936 s 6 (see PARA 251 ante) by order made by the Secretary of State: Slaughterhouses Act 1974 s 28 (amended by the Public Health (Control of Disease) Act 1984 s 78, Sch 3). As to the Secretary of State see PARA 224 ante.

2 As to the power to provide slaughterhouses for diseased animals see ANIMALS vol 2 (2008) PARA 1089 et seq. There is no longer a duty to provide public slaughterhouses. As to the mode of provision see the text and notes 5-6 infra.

3 Slaughterhouses Act 1974 s 15(1). Section 14 (as amended) (restriction of private slaughterhouses only by agreement: see PARA 473 ante) does not apply in relation to a public slaughterhouse provided by a local authority: s 15(5) (amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 5(4)). As to deemed planning permission in respect of development carried out by a local authority see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238.

4 Slaughterhouses Act 1974 s 15(2). 'The Minister' means the Minister of Agriculture, Fisheries and Food: s 34. Acquisition of land by agreement by a local authority outside its area for the purpose of its functions is authorised: see the Local Government Act 1972 s 120; and LOCAL GOVERNMENT vol 69 (2009) PARA 509. As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

5 Slaughterhouses Act 1974 s 15(3)(a). 'Slaughterhouse facilities' here means facilities for carrying on the activities of a slaughterhouse, including plant and apparatus and the services of persons as slaughtermen or otherwise: s 15(4). For the meaning of 'slaughterhouse' see PARA 471 ante.

6 Ibid s 15(3)(b). Local authorities may be authorised to purchase land compulsorily for the purposes of Pt I (ss 1-35) (as amended) other than those of s 14 (as amended) (s 30(1)), and the Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq) then applies (Slaughterhouses Act 1974 s 30(2) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I)). For this purpose, 'land' includes any interest, easement or right in or over land: Public Health Act 1936 s 343(1) (applied by the Slaughterhouses Act 1974 s 30(1)). Local inquiries may be held by a Minister: s 31(1). The Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies in relation to any such local inquiry: Slaughterhouses Act 1974 s 32(2).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(2) PUBLIC SLAUGHTERHOUSES/475. Power to provide cold stores and refrigerators.

475. Power to provide cold stores and refrigerators.

A local authority¹ which has provided, or is about to provide, a public slaughterhouse may provide a cold store or refrigerator for the storage and preservation of meat and other articles of food, and may make charges for its use².

Any proposal by a local authority to provide such a store or refrigerator within the district of another local authority requires the consent of that authority, which must not, however, be unreasonably withheld, and any dispute as to whether the consent has been unreasonably withheld must be determined by the Minister³.

1 For the meaning of 'local authority' see PARA 474 note 1 ante.

2 Slaughterhouses Act 1974 s 18(1) (amended by the Local Government Act ss 35, 42, Sch 6 para 26, Sch 8). As to the powers available see PARA 474 note 6 ante. As to deemed planning permission in respect of development carried out by a local authority see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238.

3 Slaughterhouses Act 1974 s 18(2). For the meaning of 'the Minister' see PARA 474 note 4 ante.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(2) PUBLIC SLAUGHTERHOUSES/476. Charges in respect of public slaughterhouses.

476. Charges in respect of public slaughterhouses.

A local authority¹ which has provided or established a slaughterhouse may make charges, according to scales determined by it from time to time, in respect of the use of the slaughterhouse and of any services provided there². Every scale of charges determined by a local authority must be published by it in at least one newspaper circulating in its district and in such manner as it thinks expedient for informing interested persons³.

1 For the meaning of 'local authority' see PARA 471 note 1 ante.

2 Slaughterhouses Act 1974 s 17(1).

3 Ibid s 17(2). Where a separate charge was made for the use of a cooling room, a local authority was held to be bailee for reward and liable for the loss of a carcase placed in it: *Economic Stores (Halifax) v Halifax Corp'n* (1923) 87 JP 77, CA; but see at 78 per Lord Sterndale MR as to this being only a question of fact.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(2) PUBLIC SLAUGHTERHOUSES/477. Management of public slaughterhouses.

477. Management of public slaughterhouses.

A local authority which has provided a public slaughterhouse¹ may:

- 385 (1) provide plant or apparatus for disposing of, treating or processing waste matters, refuse or by-products, resulting from the slaughter of animals in the slaughterhouse²;
- 386 (2) employ persons to slaughter or stun, in accordance with regulations³, horses (including hinnies, asses and mules), cattle, sheep, swine or goats⁴; and
- 387 (3) make such arrangements as it thinks expedient for securing that all the activities of the slaughterhouse, or any particular activities, are carried on there by its servants or agents to the exclusion of other persons⁵.

1 For the meaning of 'local authority' see PARA 471 note 1 ante; and as to the provision of slaughterhouses see PARA 474 ante.

2 Slaughterhouses Act 1974 s 16(1)(b).

3 The Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731 (as amended): see PARA 489 et seq post.

4 Slaughterhouses Act 1974 s 16(1)(c) (amended by the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 28(2), Sch 14 para 2(3)).

5 Slaughterhouses Act 1974 s 16(1)(d). However, a local authority may not exercise this power in such a manner as to deny any religious community reasonable facilities for obtaining as food the flesh of animals slaughtered by the method specially required by their religion: s 16(2).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(i) Licensing of Slaughterhouses/478. Necessity for licence.

(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS

(i) Licensing of Slaughterhouses

478. Necessity for licence.

No person may carry on the business of a slaughterhouse¹ unless the premises concerned are licensed for that business by the Food Standards Agency². Application is to be made in writing to the Food Standards Agency by the owner or occupier of, or a person proposing to occupy, the premises³. The Agency may grant the licence only if it is satisfied that the premises comply with the regulations as to hygiene and inspection⁴.

The Agency must notify the applicant in writing of its decision, and if it refuses a licence, it must notify the applicant of its reasons⁵. Where the Agency has refused a licence, or has granted a licence subject to conditions, its notification must state the right of appeal and the time allowed for appealing⁶. The Agency may revoke or suspend a licence if it is satisfied that any requirement of the regulations has not been complied with⁷.

Where the Agency has refused to license any premises, or has granted a licence subject to conditions or has suspended or revoked a licence, the owner or occupier of the premises may appeal within 21 days of the notification to a meat hygiene appeals tribunal⁸. Where the tribunal determines that the grant should not have been refused, or conditions have been unreasonably attached, or a licence should not have been suspended or revoked, the Agency must give effect to that determination⁹.

1 For this purpose, 'slaughterhouse' means any building, premises or place (other than a farmed game handling facility) for slaughtering animals the flesh of which is intended for human consumption, including any place in which animals awaiting slaughter are confined: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 2(1).

2 Ibid reg 4(1) (substituted by SI 2000/225; and amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

3 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4(3) (amended by SI 2000/656). Any change in the identity or address of a director, manager or controller of the licensed premises must be notified to the Food Standards Agency as is reasonably practicable: reg 4A (added by SI 2000/225; and amended by SI 2000/656).

4 See the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4(2)(a)(i), (b) (reg 4(2)(a) amended by SI 1995/3189; SI 1996/2235; and SI 2000/656). As to such regulations see PARA 503 et seq post. Licences are granted subject to a condition that any significant alteration to the premises or their operation must comply with the regulations: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4(6) (substituted by SI 1995/3189).

5 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4(4), (5) (amended by SI 2000/656).

6 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4(12) (amended by SI 2000/656).

7 See the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, regs 5 (as amended), 5A (added by SI 2000/225; and amended by SI 2000/656).

8 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(1) (substituted by SI 2000/225; and amended by SI 2000/656). As to the constitution of meat hygiene appeals tribunals see the Fresh Meat

(Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(2), Sch 21 (amended by SI 1995/3189); and PARAS 339-340 ante. As to the procedure to be followed on an appeal see the Meat Hygiene Appeals Tribunal (Procedure) Regulations 1992, SI 1992/2921 (as amended); and PARA 340 ante.

9 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 6(3) (substituted by SI 2000/225; and amended by SI 2000/656).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

478 Necessity for licence

TEXT AND NOTES--SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/479. Necessity for licence.

(ii) Licensing of Knackers' Yards

479. Necessity for licence.

It is an offence for the occupier of any premises to use them as a knacker's yard¹, or to permit them to be so used, unless he holds a licence² from the local authority in respect of those premises³. It is similarly an offence for a person other than the occupier to use any premises as a knacker's yard unless the occupier is so licensed⁴. Where premises used or to be used for the confinement of animals awaiting slaughter in a knacker's yard are situated outside the curtilage⁵ of the premises used or to be used for the slaughter, a separate licence may be granted authorising such use⁶. The use of any premises for or in connection with the slaughter of horses⁷ is only lawful if the licence in respect of the premises expressly authorises their use for such a purpose⁸.

In addition, no person may operate a knacker's yard unless the premises are approved by the appropriate Minister for the purpose of the requirements as to the disposal of animal by-products⁹.

1 For the meaning of 'knacker's yard' see PARA 471 ante.

2 'Licence' means a licence under the Slaughterhouses Act 1974 s 1 (as amended) authorising the use of any premises as a knacker's yard; and 'knacker's yard licence' is to be construed accordingly: s 34 (definition amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 11, Schedule). A licence should be in writing: see the Public Health Act 1936 s 283; Slaughterhouses Act 1974 s 32(2). A formal document is not necessary: *Howarth v Manchester Corp'n* (1862) 6 LT 683; *Anthony v Brecon Markets Co* (1872) LR 7 Exch 399; cf *Howell v Falmouth Boat Construction Ltd* [1951] AC 837, [1951] 2 All ER 278, amended in [1956] 1 All ER 447, HL. A consent to the erection of a slaughterhouse has been held not to cover subsequent re-erection on another site: *Hughes v Trew* (1877) 36 LT 585.

3 Slaughterhouses Act 1974 s 1(1)(a) (s 1(1)(a), (b) amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 2). Licences are granted by the local authority (see PARA 471 note 1 ante) subject to and in accordance with the provisions of the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended): s 1(2). As to the punishment of offences see PARA 485 post.

4 Ibid s 1(1)(b) (as amended: see note 3 supra).

5 'Curtilage' has been described as a courtyard, backside or piece of ground lying near or belonging to the premises: see *Pilbrow v St Leonard, Shoreditch, Vestry* [1895] 1 QB 33 at 37 per Matthew J; and see the judgment of the Court of Appeal at 433. See also *Taylor v Hickes* (1862) 12 CBNS 152; *Marson v London, Chatham and Dover Rly Co* (1868) LR 6 Eq 101; *IRC v Goodfellow* (1881) 45 JP 588; *Browne v Furtado* [1903] 1 KB 723, CA; *Brass v LCC* [1904] 2 KB 336, DC; *Lewis v Gilbertson & Co Ltd* (1904) 68 JP 323, DC; and *Re St John's Church, Bishop's Hatfield* [1967] P 113, [1966] 2 All ER 403.

6 Slaughterhouses Act 1974 s 1(3) amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 2).

7 'Horse' includes ass and mule: Slaughterhouses Act 1974 s 34.

8 Ibid s 1(4).

9 Animal By-Products Order 1999, SI 1999/646, art 14. The premises must comply with the requirements set out in Sch 14, and operators of approved premises must maintain and operate them in accordance with those requirements: art 15.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/480. Applications for knacker's yard licences.

480. Applications for knacker's yard licences.

A local authority¹ may grant or renew the grant of a licence² authorising the applicant to occupy premises as a knacker's yard³ on receipt of an application from the occupier or proposed occupier of the premises in question⁴. A local authority may refuse to grant or renew a knacker's yard licence in respect of any premises if it is not satisfied that certain requirements⁵ will be complied with when the licence is in force⁶; and the grant or renewal of a licence is subject to the prior inspection of those premises and report of an officer of the local authority⁷.

A local authority may require an applicant, before his application is considered, to give information as to any other licence he has held in respect of a slaughterhouse or which he holds or has held in respect of a knacker's yard, and it is an offence to give any information false in a material respect⁸.

1 For the meaning of 'local authority' see PARA 471 note 1 ante.

2 For the meaning of 'licence' see PARA 479 note 2 ante.

3 For the meaning of 'knacker's yard' see PARA 471 ante.

4 See the Slaughterhouses Act 1974 s 4(1).

5 The requirements relating to knackers' yards in regulations made under the Food Safety Act 1990 s 16 (see PARA 289 ante) or in construction regulations, or in byelaws, if any, made by the authority under the Slaughterhouses Act 1974 s 12 (as amended) (see PARA 484 post): s 4(2) (amended by the Food Safety Act 1990 s 59(1), Sch 3 para 18) Slaughterhouses Act 1974 s 4(3) (amended by the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 28(2), Sch 14 para 2(2)). 'Construction regulations' means regulations with respect to the construction, lay-out or equipment of premises used as a slaughterhouse or knacker's yard: Slaughterhouses Act 1974 s 34.

6 Ibid s 4(2).

7 Ibid s 4(4). 'Officer' includes an employee: s 34.

8 Ibid s 4(5) (amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 5(1)). As to enforcement and legal proceedings see PARA 485 post.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

480 Applications for knacker's yard licences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/481. Notification of refusal of licences.

481. Notification of refusal of licences.

If a local authority¹ refuses to grant or renew a licence² for a knacker's yard³, it must forthwith⁴ give notice⁵ to the applicant of the decision, and a statement of the grounds of the decision, if required by the applicant within 14 days from the date of decision, must be given to him not later than 48 hours after the request is received⁶. Every notice must state the right of appeal to a magistrates' court and the time within which such appeal may be brought⁷.

1 For the meaning of 'local authority' see PARA 471 note 1 ante.

2 For the meaning of 'licence' see PARA 479 note 2 ante.

3 For the meaning of 'knacker's yard' see PARA 471 ante.

4 'Forthwith' implies immediacy and allows no interval of time: see *Parsons v Birmingham Dairy Co* (1882) 9 QBD 172, DC; *Re Southam, ex p Lamb* (1881) 19 ChD 169, CA; *Re Muscovitch, ex p Muscovitch* [1939] Ch 694, [1939] 1 All ER 135, CA; *Brown v Bonnyrigg and Lasswade Magistrates* 1936 SC 258; *Hillingdon London Borough Council v Cutler* [1968] 1 QB 124, [1967] 2 All ER 361, CA.

5 As to the form and service of the notice see the Public Health Act 1936 ss 283, 285 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 119-120); applied by the Slaughterhouses Act 1974 s 32.

6 Ibid s 5(1) (amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 11, Schedule).

7 Slaughterhouses Act 1974 s 5(2). As to appeals see PARA 482 post.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/482. Appeals against refusal of licences.

482. Appeals against refusal of licences.

A person aggrieved¹ by the refusal² of a local authority³ to grant or renew a licence may appeal to a magistrates' court, and that court may vary or reverse the authority's decision⁴.

Provision is made for the continued user of premises pending an appeal⁵ and the local authority must give effect to a court order which varies or reverses its decision⁶.

1 The successor to an occupier of premises may be a 'person aggrieved': *Prosser v Mountain Ash UDC* [1931] 2 KB 132, DC. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 'Refusal' here includes a refusal to give an authorisation for the use of premises in respect of horses under the Slaughterhouses Act 1974 s 1(4) (see PARA 479 ante): s 5(3).

3 For the meaning of 'local authority' see PARA 471 note 1 ante.

4 Ibid s 6(1) (amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 11, Schedule). The procedure on appeal is by way of complaint for an order and the Magistrates' Courts Act 1980 applies: Slaughterhouses Act 1974 s 6(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 124). The time limit for bringing an appeal is 21 days from the date of the notice of refusal: Slaughterhouses Act 1974 s 6(3). A person aggrieved by the decision of a magistrates' court may appeal to the Crown Court: s 6(4). As to procedure on complaint see the Magistrates' Courts Act 1980 ss 51-57; and MAGISTRATES. As to appeal to the Crown Court see COURTS.

5 See the Slaughterhouses Act 1974 s 7.

6 Ibid s 8 (amended by the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, art 11, Schedule).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/483. Duration of licences.

483. Duration of licences.

Licences remain in force for such period not exceeding 13 months as may be fixed by the local authority, but they may be renewed from time to time for any period not exceeding 13 months at any one time¹.

¹ Slaughterhouses Act 1974 s 9. Provision is made for temporary continuance of a licence on the death of the holder: see s 10. For the meaning of 'local authority' see PARA 471 note 1 ante.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

483 Duration of licences

NOTE 1--Slaughterhouses Act 1974 s 10 amended: Civil Partnership Act 2004 Sch 27 para 48.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/484. Byelaws regulating knackers' yards.

484. Byelaws regulating knackers' yards.

A local authority¹ may make byelaws² for securing that knackers' yards³ are kept in a sanitary condition and properly managed⁴, and requiring a person licensed to keep a knackers' yard to keep, and produce when required, records of animals brought into the yard and of the manner in which those animals and different parts of them were disposed of⁵. Where a person holding a licence is convicted of any offence against any such byelaw the court may, in addition to any other punishment, cancel the licence⁶.

1 For the meaning of 'local authority' see PARA 471 note 1 ante.

2 The Minister is the confirming authority: Slaughterhouses Act 1974 s 12(3). For the meaning of 'the Minister' see PARA 474 note 4 ante.

3 For the meaning of 'knackers' yard' see PARA 471 ante.

4 Slaughterhouses Act 1974 s 12(1)(a) (amended by the Local Government, Planning and Land Act 1980 ss 1(1), 194, Sch 1 para 12, Sch 34 Pt I; the Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996, SI 1996/2235, arts 3(1), 11, Schedule). For the procedure for making byelaws, powers to include fines and directions as to evidence see the Local Government Act 1972 ss 235-238 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 553 et seq. Nothing in the Slaughterhouses Act 1974 Pt II (ss 36-45) (as amended) restricts the power to make byelaws under this provision, but where any such byelaws conflict with regulations made under the Food Safety Act 1990 s 16 (see PARA 289 ante), the regulations prevail: Slaughterhouses Act 1974 s 12(2) (amended by the Food Safety Act 1990 s 59(1), Sch 3 para 18). Model byelaws for knackers' yards entitled 'Ministry of Food, Model byelaws, series II' have been approved: see Ministry of Food circular MF 16/54.

5 Slaughterhouses Act 1974 s 12(1)(b).

6 Ibid s 12(4).

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

484-485 Byelaws regulating knackers' yards, Enforcement and legal proceedings

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(3) LICENSING OF SLAUGHTERHOUSES AND KNACKERS' YARDS/(ii) Licensing of Knackers' Yards/485. Enforcement and legal proceedings.

485. Enforcement and legal proceedings.

Local authorities¹ are under a duty to execute and enforce in their districts the provisions relating to the licensing of knackers' yards². Powers of entry are conferred³ and obstruction is an offence⁴. Local authorities charged with the enforcement of these provisions may institute proceedings⁵, and offences⁶ are punishable on summary conviction⁷.

Appeal lies to the Crown Court from a decision of a magistrates' court⁸.

1 For the meaning of 'local authority' see PARA 471 note 1 ante.

2 The provisions of the Slaughterhouses Act 1974 Pt I (ss 1-35) (as amended): s 19. For the meaning of 'knackers' yard' see PARA 471 ante. Orders in Council made by statutory instrument subject to annulment by either House of Parliament may be made to provide for the application of Pt I (as amended) to the Crown: see s 33. At the date at which this volume states the law, no such order had been made.

3 An authorised council officer (see *ibid* s 20(6)) may enter premises at all reasonable hours to ascertain whether there has been a contravention (see s 20(1)), if necessary by force under a warrant (see s 20(2), (3)). Disclosure of any trade secret so obtained is an offence: see s 20(4). Permission of the local authority under the Animal Health Act 1981 must be obtained to enter premises where diseased animals are kept: see the Slaughterhouses Act 1974 s 20(5) (amended by the Animal Health Act 1981 s 96, Sch 5 para 11). For powers of entry granted to authorised officers of the Meat and Livestock Commission to enter premises which they have reasonable cause to believe to be premises used for the slaughter of livestock or for the storage, processing, grading, classification, packing, cutting or sale of meat see the Agriculture Act 1967 s 23 (as amended); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1064. For the power of a constable to enter a knacker's yard to see whether there has been any contravention of the Protection of Animals Act 1911 s 5(2) (relating to cruelty) see ANIMALS.

4 See the Slaughterhouses Act 1974 s 21. An officer of a council is not personally liable in respect of an act done by him in execution or purported execution of the Slaughterhouses Act 1974 Pt I (as amended) within the scope of his employment if he acted in good faith believing it was part of his duty: see s 29(1). As to indemnification for a loss incurred by him see s 29(2). 'Officer' includes employee: s 34. 'Council' includes a port health authority: s 34.

5 *Ibid* s 22. An authority may institute proceedings if and only if it is the authority charged with the execution and enforcement of the provision concerned: s 22.

6 The offences under *ibid* Pt I (as amended), or byelaws made under those provisions.

7 *Ibid* s 23(1). Unless a special punishment is provided, an offender is liable to a fine not exceeding level 3 on the standard scale or imprisonment not exceeding three months, or both, and in the case of a continuing offence a further fine not exceeding £5 for each day during which the offence continues after conviction: s 23(2). As to the standard scale see PARA 242 note 18 ante. As to offences by corporations see s 24. It is a defence that contravention was due to another's act or default and that due diligence was used to secure compliance with the provision in question: see s 25.

8 See *ibid* s 26.

UPDATE

470-485 The legislation ... Enforcement and legal proceedings

Functions of the Secretary of State under the Slaughterhouses Act 1974 Pt I (ss 1-35), so far as exercisable in relation to Wales, have been transferred to the National

Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

484-485 Byelaws regulating knackers' yards, Enforcement and legal proceedings

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(4) LICENSING OF SLAUGHTERMEN/486. Necessity for slaughterman's licence.

(4) LICENSING OF SLAUGHTERMEN

486. Necessity for slaughterman's licence.

No person may carry out the following operations except where a licence or a provisional licence has been granted¹:

- 388 (1) the restraint² of any animal³ for the purpose of stunning⁴, slaughtering⁵ or killing⁶ that animal⁷;
- 389 (2) the stunning of any animal⁸;
- 390 (3) the slaughter of any animal⁹;
- 391 (4) the killing of any animal¹⁰;
- 392 (5) the pithing¹¹ of any stunned animal¹²;
- 393 (6) the assessment of effective stunning, pithing or killing of any animal by any person whose duty it is to make such an assessment¹³;
- 394 (7) the shackling or hoisting of any stunned animal¹⁴;
- 395 (8) the bleeding of any animal which is not dead¹⁵.

Any person who contravenes those provisions is guilty of an offence¹⁶.

1 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 4(3), Sch 1 para 2.

2 'Restraint', in relation to an animal, means the application of any procedure designed to restrict its movements in order to facilitate effective stunning or killing: *ibid* reg 2(1).

3 'Animal' includes bird: *ibid* reg 2(1).

4 'Stunning', in relation to an animal, means any process which causes immediate loss of consciousness which lasts until death: *ibid* reg 2(1).

5 'Slaughter', in relation to an animal, means causing the death of the animal by bleeding: *ibid* reg 2(1).

6 'Killing', in relation to an animal, means causing the death of the animal by any process other than slaughter: *ibid* reg 2(1).

7 *Ibid* Sch 1 para 3(a).

8 *Ibid* Sch 1 para 3(b).

9 *Ibid* Sch 1 para 3(c).

10 *Ibid* Sch 1 para 3(d).

11 'Pithing', in relation to an animal, means the destruction of its brain tissue after stunning to the extent that irreversible loss of consciousness is ensured: *ibid* reg 2(1).

12 *Ibid* Sch 1 para 3(e).

13 *Ibid* Sch 1 para 3(f).

14 *Ibid* Sch 1 para 3(g).

15 *Ibid* Sch 1 para 3(h). For the circumstances in which Sch 1 para 2 does not apply see Sch 1 para 1 (these include killing in emergency; killing for non-commercial purposes or in field sports; killing home-grown birds, or

foxes or mink, or surplus chicks; operating equipment without performing a licensable operation; and veterinary activities).

16 See *ibid* reg 26; and PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(4) LICENSING OF SLAUGHTERMEN/487. Grant of slaughterman's licence.

487. Grant of slaughterman's licence.

Before a slaughterman's licence may be granted, a certificate of competence¹ must be issued in respect of the applicant². An authorised veterinary surgeon must issue the certificate if, in his opinion:

- 396 (1) the applicant is competent to carry out the specified operations³ without causing avoidable pain, excitement or suffering to any animal, and has sufficient knowledge of the relevant legislation and codes relating to the operations in respect of which he is applying for a certificate⁴;
- 397 (2) the applicant is a fit and proper person to hold a certificate⁵; and
- 398 (3) the applicant is not below the age of 18⁶.

Where the Food Standards Agency on behalf of the relevant Minister⁷ receives a certificate of competence for registration, together with the appropriate fees⁸, the Agency must grant and register a licence if, in the Agency's opinion, the applicant is a fit and proper person to hold a licence and the applicant provides any information required⁹. Any licence granted and registered must specify the matters which it covers, namely, the relevant operations¹⁰, the relevant species and the relevant equipment or instruments¹¹. A registered licence will be valid throughout Great Britain¹² and will remain in force until any such time as it may be revoked or suspended by the Agency, on behalf of the Minister¹³.

Any holder of a registered licence who wishes it to be modified in respect of the relevant operations, species, equipment or instruments must first obtain a provisional licence in respect of those modifications¹⁴. A certificate of competence in respect of any modifications must then be obtained and sent to the Agency, acting on behalf of the Minister before a registered licence in respect of the modifications can be granted¹⁵. A provisional licence will be granted to an applicant who (a) is, in the opinion of the authorised veterinary surgeon, a fit and proper person to hold a provisional licence; (b) is not under the age of 18; and (c) provides any information required¹⁶.

1 'Certificate of competence' means a certificate issued by a veterinary surgeon authorised for the purpose by the Food Standards Agency on behalf of the Minister, or a certificate issued by a veterinary surgeon which accompanied an application for a licence under the Slaughter of Poultry (Licences and Specified Qualifications) Regulations 1991, SI 1991/1676, or a licence granted to the applicant for the purpose of slaughtering animals by the Jewish method by the Rabbinical Commission: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 4(3), Sch 1 para 4 (amended by SI 2000/656). For the meaning of 'the Minister' see note 7 infra. As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 5(1) (amended by SI 2000/656).

3 I.e. the operations referred to in the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 3: see PARA 486 ante.

4 Ibid Sch 1 para 4(2)(a).

5 Ibid Sch 1 para 4(2)(b).

6 Ibid Sch 1 para 4(2)(c).

7 For these purposes, 'the Minister' means, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the National Assembly for Wales: *ibid* reg 2(1); National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, reg 2, Sch 1. As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 Fees may be charged under ibid Sch 1 para 10.

9 Ibid Sch 1 para 5(1) (amended by SI 2000/656). As to the requirement for written details see the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 5(2) (amended by SI 2000/656). The applicant must disclose any previous offences under animal welfare legislation: see the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 4(3).

10 Ie the operations referred to in ibid Sch 1 para 3: see PARA 486 ante.

11 Ibid Sch 1 para 5(3).

12 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

13 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 5(4) (amended by SI 2000/656).

14 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 6(1).

15 Ibid Sch 1 para 6(2) (amended by SI 2000/656).

16 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 7(1). Applicants for a provisional licence must provide certain written details: see Sch 1 para 7(2). Operations under a provisional licence must be carried out in the presence and under the direction of a veterinary surgeon or a slaughterman's licence: see Sch 1 para 7(4). Provisional licences remain in force for a maximum of three months and are valid throughout Great Britain: Sch 1 para 7(5), (6).

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

487 Grant of slaughterman's licence

NOTE 7--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(4) LICENSING OF SLAUGHTERMEN/488. Refusal, suspension or revocation of slaughterman's licence.

488. Refusal, suspension or revocation of slaughterman's licence.

An authorised veterinary surgeon may refuse to issue a certificate of competence¹ or refuse to grant a provisional licence² and the Food Standards Agency³, on behalf of the Minister⁴, may refuse to grant a registered licence if the applicant has failed to comply with any condition of any licence previously granted to him⁵ or has been convicted of certain offences⁶.

The Agency, on behalf of the Minister, may suspend or revoke a registered licence if: (1) satisfied that the holder of the licence is no longer a fit and proper person to hold it⁷; (2) satisfied that the holder of the licence is not, or is no longer, competent to carry out the operations which the licence authorises⁸; (3) the holder has failed to comply with any condition of the licence granted to him⁹; or (4) the holder has been convicted of certain offences¹⁰. A person whose registered licence has been suspended or revoked may be granted a provisional licence by an authorised veterinary surgeon¹¹.

1 As to certificates of competence see PARA 487 ante.

2 As to provisional licences see PARA 487 ante.

3 As to the establishment of the Food Standards Agency see PARA 225 ante.

4 For the meaning of 'the Minister' see PARA 487 note 7 ante.

5 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 4(3), Sch 1 para 8(a) (amended by SI 2000/656).

6 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 8(b) (amended by SI 2000/656). As to the appeals system see the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 11 (amended by SI 2000/656).

7 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 9(1)(a) (para 9(1) amended by SI 2000/656).

8 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1 para 9(1)(b) (as amended: see note 7 supra).

9 Ibid Sch 1 para 9(1)(c) (as amended: see note 7 supra).

10 Ibid Sch 1 para 9(1)(d) (as amended: see note 7 supra).

11 Ibid Sch 1 para 9(2).

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

488 Refusal, suspension or revocation of slaughterman's licence

TEXT AND NOTES 7-11--In relation to England, any person whose licence has been suspended or revoked must surrender it to the Agency within 14 days of receipt of a notice informing him of the suspension or revocation, whether or not there is to be an appeal against the suspension or revocation: SI 1995/731 Sch 1 para 9(3) (added, in relation to England, by SI 2003/3272; and, in relation to Wales, by SI 2007/2461).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/489. Welfare and humane treatment of animals.

(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS

489. Welfare and humane treatment of animals.

No person engaged in the movement¹, lairaging², restraint³, stunning⁴, slaughter⁵ or killing⁶ of animals⁷ may cause any avoidable excitement, pain or suffering to any animal, or permit any animal to sustain any avoidable excitement, pain or suffering⁸. Nor may a person engage in such operations unless he has the knowledge and skill necessary to perform those tasks humanely and efficiently and in accordance with the regulations⁹.

The occupier of a slaughterhouse¹⁰ or knacker's yard¹¹ must ensure that at all times when there are live animals on the premises a person (whether or not himself) is available who is competent and has authority to take whatever action may be necessary to safeguard the welfare of the animals in accordance with the regulations¹². Such an occupier must ensure that any person who is involved in any of the activities governed by the regulations (1) is acquainted with the provisions of the legislation and of any welfare codes¹³ relevant to the operations that person carries out¹⁴; (2) has access to a copy of any such welfare code at the slaughterhouse or knacker's yard¹⁵; (3) has received instruction and guidance on the requirements of such legislation and any such welfare code¹⁶; and (4) where any such activity requires a licence¹⁴, has the appropriate licence¹⁷.

1 'Movement', in relation to an animal, means unloading it or driving it from an unloading place, stall or pen at a slaughterhouse or knacker's yard to the premises or place where it is to be lairaged, slaughtered or killed: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 2(1).

2 'Lairaging', in relation to an animal, means keeping the animal in a stall, pen, covered area or field used by a slaughterhouse or knacker's yard in order to confine it until it is slaughtered or killed or to give it any necessary attention before it is slaughtered or killed: *ibid* reg 2(1).

3 For the meaning of 'restraint' see PARA 486 note 2 ante.

4 For the meaning of 'stunning' see PARA 486 note 4 ante.

5 For the meaning of 'slaughter' see PARA 486 note 5 ante.

6 For the meaning of 'killing' see PARA 486 note 6 ante.

7 For the meaning of 'animal' see PARA 486 note 3 ante.

8 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 4(1).

9 *Ibid* reg 4(2).

10 'Slaughterhouse' means any premises used for the commercial slaughter or killing of solipeds, ruminants, pigs, rabbits or birds the flesh of which is intended for human consumption, including any associated facilities for moving or lairaging such animals: *ibid* reg 2(1).

11 'Knacker's yard' means any premises used for the commercial slaughter or killing of solipeds, ruminants, pigs, rabbits or birds, the flesh of which is not intended for human consumption, including any associated facilities for moving or lairaging such animals: *ibid* reg 2(1).

12 *Ibid* reg 5.

13 'Welfare code' means any current code issued under *ibid* reg 7.

14 Ibid reg 6(1)(a).

15 Ibid reg 6(1)(b).

16 Ibid reg 6(1)(c).

17 Is a licence required by slaughtermen for certain operations. Provision as to such licences is contained in ibid Sch 1: see PARA 487 ante.

18 Ibid reg 6(1)(d). As to offences and penalties in relation to contravention of the regulations see PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/490. Construction, equipment and maintenance of slaughterhouses and knackers' yards.

490. Construction, equipment and maintenance of slaughterhouses and knackers' yards.

The occupier of a slaughterhouse¹ or knacker's yard² must ensure that its construction, facilities, equipment and operation are such as to spare animals³ any avoidable excitement, pain, injury or suffering⁴. It must have suitable equipment and facilities available for the purpose of unloading animals from means of transport⁵, and there must be no sharp edges or protrusions in the slaughterhouse or knacker's yard with which any animal may come into contact⁶. The place of slaughter⁷ or killing⁸ must be sited in such a way as to minimise the handling of the animal at any time up to the point of slaughter or killing⁹, and any instrument, restraining equipment, other equipment or installation which is used for stunning, slaughter or killing must be designed, constructed and maintained so as to facilitate rapid and effective stunning, slaughter or killing¹⁰. The occupier must also ensure that for emergency use, suitable spare equipment and instruments for stunning, slaughter or killing are kept at the site within the slaughterhouse or knacker's yard where stunning slaughter or killing takes place and that the equipment and instruments are properly maintained and inspected regularly¹¹.

1 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

2 For the meaning of 'knacker's yard' see PARA 489 note 11 ante.

3 For the meaning of 'animal' see PARA 486 note 3 ante.

4 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 8, Sch 2 para 1(a).

5 Ibid Sch 2 para 1(b).

6 Ibid Sch 2 para 1(c).

7 For the meaning of 'slaughter' see PARA 486 note 5 ante.

8 For the meaning of 'killing' see PARA 486 note 6 ante.

9 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 1(d).

10 Ibid Sch 2 para 1(e).

11 Ibid Sch 2 para 1(f).

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/491. Additional requirements.

491. Additional requirements.

Where animals¹ are delivered to a slaughterhouse² or knacker's yard³ other than in containers⁴, the occupier must ensure that the following requirements are met⁵. Equipment for unloading such animals must be of a suitable height and design for that purpose and must have non-slip flooring⁶. Any bridge, ramp or gangway used must be fitted with sides or railings to prevent animals from falling⁷ and exit and entry ramps must have the minimum possible incline⁸. Passageways must be constructed to minimise the risk of injury to any animal⁹ and, if horses¹⁰ are slaughtered at the slaughterhouse or knacker's yard, a separate room or bay must be provided for their slaughter or killing¹¹. A sufficient number of pens for adequate lairaging¹² of the animals must be provided with adequate protection from the effects of adverse weather conditions¹³. Lairages must have floors which minimise the risk of slipping, adequate ventilation and lighting, suitable equipment for tethering animals, and drinking facilities and racks for watering and feeding the animals¹⁴. Where a field lairage is provided, it must have appropriate protection from adverse weather conditions, suitable tethering equipment, adequate lighting and drinking facilities¹⁵.

Where birds are slaughtered or killed at a slaughterhouse, the occupier must, in addition to the general requirements, make certain provision in relation to shackle lines¹⁶.

1 For the meaning of 'animal' see PARA 486 note 3 ante.

2 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

3 For the meaning of 'knacker's yard' see PARA 489 note 11 ante.

4 'Container' means any transport crate in which an animal is delivered to a slaughterhouse or knacker's yard: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 2(1).

5 Ibid Sch 2 para 2.

6 Ibid Sch 2 para 2(a).

7 Ibid Sch 2 para 2(b).

8 Ibid Sch 2 para 2(c).

9 Ibid Sch 2 para 2(d).

10 'Horse' includes any hinny, ass or mule: ibid reg 2(1).

11 Ibid Sch 2 para 2(e). Except in an emergency, horses may not be slaughtered or killed except in a room or bay so provided, and may not be slaughtered or killed: (1) in a room or bay in which there are the remains of a horse or other animal; or (2) within sight of any other horse: Sch 8 paras 1-3.

11 For the meaning of 'lairaging' see PARA 489 note 2 ante.

12 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 3(a). 'Adverse weather condition' means any weather condition, including direct sunlight, which has an adverse affect on the welfare of an animal: reg 2(1).

13 Ibid Sch 2 para 3(b).

14 Ibid Sch 2 para 4.

15 See *ibid* Sch 2 para 5. As to offences and penalties in relation to contravention of the regulations see PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/492. Requirements for animals awaiting slaughter or killing.

492. Requirements for animals awaiting slaughter or killing.

The occupier of a slaughterhouse¹ or knacker's yard² and any person engaged in the movement³ of lairaging⁴ of animals⁵ must ensure that:

- 399 (1) every animal is unloaded as soon as possible after its arrival and, if delay in unloading is unavoidable, it is protected from adverse weather conditions⁶ and is provided with adequate ventilation⁷;
- 400 (2) when unloaded, every animal is protected from adverse weather conditions and is provided with adequate ventilation⁸;
- 401 (3) if any animal has been subjected to high temperatures in humid weather, it is cooled⁹;
- 402 (4) animals which might injure each other are kept apart¹⁰;
- 403 (5) pending the slaughter¹¹ or killing¹² of any sick or disabled animal, it is kept apart from any animal which is not sick or disabled¹³; and
- 404 (6) no person drags any animal which has been stunned¹⁴ or killed over any other animal which has not been stunned or killed¹⁵.

The condition and state of health of every animal must be inspected at least every morning and evening by the occupier or by a competent person acting on his behalf¹⁶. Any animal which has experienced pain or suffering during transport or following its arrival at the slaughterhouse or knacker's yard, and any animal which is too young to take solid feed, must be slaughtered or killed immediately¹⁷. Any animal which is unable to walk must not be dragged to its place of slaughter, but must be slaughtered or killed where it lies or be transported to a place of emergency and immediately slaughtered or killed¹⁸.

Where animals are delivered in containers¹⁹ the containers must be handled with care and not thrown, dropped or knocked over²⁰. The containers must be loaded horizontally where possible, and particular care must be taken where the bottom of a container is perforated or flexible²¹. Where appropriate, animals must be unloaded individually²². An animal transported in a container must be slaughtered or killed as soon as possible and, if for any reason it is delayed, the animal must be provided with drinking water and sufficient food²³.

Where animals are not delivered in containers care must be taken not to frighten, excite or mistreat any animal when moving it²⁴, and no animal should be overturned²⁵. Slaughter or killing must take place without delay, but if an animal is not slaughtered or killed immediately on arrival it must be lairaged²⁶. No person may lift or drag an animal in such a way as to cause it unnecessary suffering²⁷, or cause or permit it to be led or driven over any ground or floor on which the animal is likely to slip or fall²⁸. Every animal must be moved with care, and, when necessary, led individually²⁹. Provision is made in relation to instruments used to guide and move animals³⁰, and no person may strike or apply pressure to a particularly sensitive area of an animal's body, injure its eyes or tail or inflict a blow or kick³¹. Where animals are lairaged, the lairaging must meet certain conditions³².

Where birds are awaiting slaughter or killing at a place of purchase, they must be placed in accommodation where they are able to stand upright and stretch their wings and they must be provided with sufficient food and drinking water³³.

- 1 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.
- 2 For the meaning of 'knacker's yard' see PARA 489 note 11 ante.
- 3 For the meaning of 'movement' see PARA 489 note 1 ante.
- 4 For the meaning of 'lairaging' see PARA 489 note 2 ante.
- 5 For the meaning of 'animal' see PARA 486 note 3 ante.
- 6 For the meaning of 'adverse weather condition' see PARA 491 note 12 ante.
- 7 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 2(a).
- 8 Ibid Sch 2 para 2(b).
- 9 Ibid Sch 2 para 2(c).
- 10 Ibid Sch 2 para 2(d).
- 11 For the meaning of 'slaughter' see PARA 486 note 5 ante.
- 12 For the meaning of 'killing' see PARA 486 note 6 ante.
- 13 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 2(e).
- 14 For the meaning of 'stunning' see PARA 486 note 4 ante.
- 15 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 2(f).
- 16 Ibid Sch 2 para 3.
- 17 Ibid Sch 2 para 4.
- 18 Ibid Sch 2 para 5.
- 19 For the meaning of 'container' see PARA 491 note 4 ante.
- 20 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 2 para 14(a).
- 21 Ibid Sch 2 para 14(b), (c).
- 22 Ibid Sch 2 para 14(d).
- 23 Ibid Sch 2 para 15.
- 24 Ibid Sch 2 para 6(a).
- 25 Ibid Sch 2 para 6(b).
- 26 Ibid Sch 2 para 6(c), (d).
- 27 Ibid Sch 2 para 7.
- 28 Ibid Sch 2 para 8.
- 29 Ibid Sch 2 para 9.
- 30 See ibid Sch 2 paras 10, 11.
- 31 Ibid Sch 2 para 12.
- 32 See ibid Sch 2 para 13.
- 33 Ibid Sch 2 para 16. As to offences and penalties in relation to contravention of the regulations see PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/493. Restraint of animals before stunning, slaughter or killing.

493. Restraint of animals before stunning, slaughter or killing.

No person may stun¹, slaughter² or kill³, or cause or permit to be stunned, slaughtered or killed, any animal⁴ without restraining⁵ it in an appropriate manner in such a way as to spare it any avoidable pain, suffering, agitation, injury or contusions⁶. Adult bovine animals may only be stunned if they are confined in a stunning pen⁷ or restraining pen which is in good working order⁸. The person who is to stun the animal must be ready to stun the animal as soon as the animal is placed in the pen or its head is fastened⁹ and the legs of an animal must not be tied¹⁰. No animal may be suspended before it is stunned or killed¹¹, but birds may be suspended, provided that they are suspended in such a manner so as to prevent avoidable pain and suffering¹².

Any animal which is to be stunned or killed by mechanical or electrical means applied to the head must be presented in such a position that the equipment can be operated accurately and for the appropriate time¹³. Electrical stunning or killing equipment is not to be used as a means of restraining or immobilising any animal¹⁴. Provision is also made in respect of the operation of shackle lines for birds¹⁵.

1 For the meaning of 'stunning' see PARA 486 note 4 ante.

2 For the meaning of 'slaughter' see PARA 486 note 5 ante.

3 For the meaning of 'killing' see PARA 486 note 6 ante.

4 For this purpose, 'animal' means any soliped, ruminant, pig, rabbit or bird: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, regs 9(b), 10(b), Sch 4 para 1.

5 For the meaning of 'restraint' see PARA 486 note 2 ante.

6 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 4 para 2.

7 'Stunning pen' means a pen or compartment which is suitable for confining adult bovine animals while they are being stunned and which is so constructed that it: (1) permits one animal at a time to be confined in it without discomfort; (2) prevents any substantial movement forwards, backwards or sideways of an animal confined in it; (3) restricts the movement of the head of any animal confined in it without causing the animal any avoidable excitement so as to permit accurate stunning and allows the head of the animal to be released immediately after the animal has been stunned; (4) allows unimpeded access to the forehead of the animal confined in it: *ibid* reg 2(1).

8 *Ibid* Sch 4 para 3.

9 *Ibid* Sch 4 para 4.

10 *Ibid* Sch 4 para 5.

11 *Ibid* Sch 4 para 6(1). An animal held in a restraint system is not regarded as being suspended: Sch 4 para 6(3).

12 *Ibid* Sch 4 para 6(2).

13 *Ibid* Sch 4 para 7.

14 *Ibid* Sch 4 para 8.

15 See *ibid* Sch 4 para 9. As to offences and penalties in relation to contravention of the regulations see PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

493 Restraint of animals before stunning, slaughter or killing

TEXT AND NOTE 12--SI 1995/731 Sch 4 para 6(2) amended, in relation to England, by SI 2003/3272, and, in relation to Wales, by SI 2007/2461.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/494. Stunning of animals.

494. Stunning of animals.

Where any soliped, ruminant, pig, rabbit or bird is brought into a slaughterhouse¹ or knacker's yard² for slaughter³, it must be stunned before slaughter in accordance with regulations⁴. Any person engaged in the stunning⁵ of animals⁶ must ensure that any instrument, restraining equipment or other equipment and installation used for the stunning of any animal is used in such a way as to facilitate rapid and effective stunning⁷.

No person may stun any animal unless it is possible to bleed, pith⁸ or kill⁹ it without delay¹⁰. The permitted methods of stunning are by use of a captive bolt¹¹, by concussion¹² and by electronarcosis¹³.

1 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

2 For the meaning of 'knacker's yard' see PARA 489 note 11 ante.

3 For the meaning of 'slaughter' see PARA 486 note 5 ante.

4 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 9(c).

5 For the meaning of 'stunning' see PARA 486 note 4 ante.

6 For this purpose, 'animal' means any soliped, ruminant, pig, rabbit or bird: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 9(c), Sch 5 para 1.

7 Ibid Sch 5 para 2.

8 For the meaning of 'pithing' see PARA 486 note 11 ante.

9 For the meaning of 'killing' see PARA 486 note 6 ante.

10 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 5 para 3.

11 For specific requirements as to the use of a captive bolt see ibid Sch 5 paras 5, 6.

12 For specific requirements as to stunning by concussion see ibid Sch 5 para 7.

13 Ibid Sch 5 para 4. For specific requirements as to stunning by electronarcosis see Sch 5 paras 8-12. As to offences and penalties in relation to contravention of the regulations see PARA 495 post.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(5) CONDITIONS FOR SLAUGHTER OR KILLING OF ANIMALS/495. Enforcement, offences and penalties.

495. Enforcement, offences and penalties.

An authorised person¹ may at any time enter any slaughterhouse² or knacker's yard³ or any land or premises, other than premises wholly or mainly used as a dwelling, where he reasonably suspects that any activity which is governed by the regulations⁴ is, or has been, carried on⁵. He has power to carry out all checks and examinations necessary for the enforcement of the regulations⁶. Where he has a reasonable suspicion that there is or has been a contravention of the regulations, the authorised person may take samples from any animal or carcase or take away any carcase or part of a carcase, require the production of, or inspect, any relevant record or document and take copies of, or take away, any such record or document⁷.

No person may (1) intentionally obstruct any person acting in the execution of the regulations⁸; (2) without reasonable cause, fail to give any such person any assistance or information which that person may reasonably require of him for the purposes of his functions⁹; or (3) furnish to any person any information which he knows to be false or misleading¹⁰.

Any person who contravenes the regulations is guilty of an offence¹¹ and may be liable on summary conviction to a fine or imprisonment¹². It is a defence to prove that by reason of accident or other emergency the contravention was necessary for preventing injury or suffering to any person or animal¹³.

1 'Authorised person' means any person authorised in writing by the Minister for the purposes of the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731: reg 2(1). For the meaning of 'the Minister' see PARA 487 note 7 ante.

2 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

3 For the meaning of 'knacker's yard' see PARA 489 note 11 ante.

4 I.e. the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731 (as amended).

5 Ibid reg 23(1). On entry, the authorised person must produce, if required, his document of authority: reg 23(1).

6 Ibid reg 23(2). As to the charges for such monitoring see the Meat (Hygiene and Inspection) (Charges) Regulations 1998, SI 1998/2095.

7 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 23(3). An authorised person may take onto the premises such other persons as he considers necessary, including a representative of the European Commission: reg 23(4).

8 Ibid reg 24(1)(a).

9 Ibid reg 24(1)(b).

10 Ibid reg 24(1)(c).

11 Ibid reg 26(1). As to offences by bodies corporate see reg 25.

12 See ibid reg 26(2)-(4).

13 Ibid reg 27.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

495 Enforcement, offences and penalties

NOTE 6--SI 1998/2095 revoked: SI 2005/2983 (England); SI 2005/3370 (Wales). See now the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/496. Killing of animals.

(6) METHODS OF SLAUGHTER

496. Killing of animals.

No person may kill¹, or cause or permit to be killed, any animal² except by one of the following methods: (1) free bullet³; (2) electrocution⁴; (3) for birds only, decapitation or dislocation of the neck⁵; (4) exposure of pigs and birds to gas mixtures⁶. Where an animal is killed by electrocution, the animal must first be stunned⁷ in accordance with the relevant provisions⁸ and the strength and duration of the current used must be sufficient to immediately kill an animal of that species⁹.

1 For the meaning of 'killing' see PARA 486 note 6 ante.

2 For the meaning of 'animal' for this purpose see PARA 494 note 6 ante.

3 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 10(c), Sch 5 para 13(a).

4 Ibid Sch 5 para 13(b).

5 Ibid Sch 5 para 13(c).

6 Ibid Sch 5 para 13(d). As to killing pigs and birds by gas mixtures see PARA 498 post. As to the special provisions as to the slaughter or killing of horses see PARA 491 ante.

7 For the meaning of 'stunning' see PARA 486 note 4 ante.

8 Ie the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 5 paras 5, 8-11: see PARA 494 ante.

9 Ibid Sch 5 para 14.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

496 Killing of animals

TEXT AND NOTES 5, 6--SI 1995/731 Sch 5 para 13(c)-(e) substituted for Sch 5 para 13(c), (d), in relation to England, by SI 2007/402, and, in relation to Wales, by SI 2007/2461. See further SI 1995/731 Sch 7A (added, in relation to England, by SI 2007/402, and, in relation to Wales, by SI 2007/2461), which makes provision in relation to the killing of birds by exposure to gas mixtures elsewhere than in a slaughterhouse.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/497. Bleeding or pithing of animals.

497. Bleeding or pithing of animals.

Any person bleeding or pithing¹ an animal² which has been stunned³ must ensure that it is bled or pithed without delay⁴. No bull, cow, heifer, steer, calf, sheep, goat or pig may be bled within sight of any other such animal except in an emergency⁵ and requirements ensure that the bleeding must be rapid and completed before the animal regains consciousness⁶. Provision is also made for the manual back up of automatic machinery for the slaughter of birds⁷.

1 For the meaning of 'pithing' see PARA 486 note 11 ante.

2 'Animal' means any soliped, ruminant, pig, rabbit or bird: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 9(d), Sch 6 para 1.

3 For the meaning of 'stunning' see PARA 486 note 4 ante.

4 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 6 para 2(1), (2).

5 Ibid Sch 6 para 2(3).

6 See ibid Sch 6 para 3.

7 See ibid Sch 6 para 5. As to offences and penalties in relation to contravention of the regulations see PARA 495 ante.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

497 Bleeding or pithing of animals

TEXT AND NOTES--Nothing in SI 1995/731 permits the immobilisation of any bovine, ovine or caprine animal prior to slaughtering it for sale for human or animal consumption: reg 3A(1) (reg 3A added, in relation to England, by SI 2001/447 and, in relation to Wales, by SI 2001/1303). 'Immobilisation' of an animal means the laceration, after stunning, of its central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity and, in England, 'sale' includes supply, otherwise than on sale, in the course of a business, whether carried on for profit or not: SI 1995/731 reg 3A(2) (as added).

See Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881, Sch 7 para 4; Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154, Sch 7 para 4.

TEXT AND NOTE 5--Omitted, in relation to England, by SI 2003/3272, and, in relation to Wales, by SI 2007/2461.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/498. Killing of pigs and birds.

498. Killing of pigs and birds.

Pigs may be killed at a slaughterhouse¹ by exposure to carbon dioxide gas mixture in a chamber provided for the purpose². Provision is made in relation to the construction, design and maintenance of the chamber³ and its operation⁴.

Birds⁵ may be killed at a slaughterhouse by exposure to an anoxic gas mixture which rapidly renders them insensible to pain or distress in a chamber provided for the purpose⁶. The occupier of the slaughterhouse must ensure that certain requirements in relation to the construction⁷ and operation⁸ of the chamber are met.

1 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

2 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 11, Sch 7 para 3(1). A carbon dioxide gas mixture means at least 70% carbon dioxide by volume in atmospheric air: Sch 7 para 3(2).

3 See *ibid* Sch 7 para 4.

4 See *ibid* Sch 7 paras 5, 6.

5 'Bird' means any domestic fowl or turkey: *ibid* Sch 7 para 2.

6 *Ibid* Sch 7 para 7.

7 See *ibid* Sch 7 para 8.

8 See *ibid* Sch 7 paras 9, 10. As to offences and penalties in relation to contravention of the regulations see PARA 495 ante.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

498 Killing of pigs and birds

NOTES 6-8--SI 1995/731 Sch 7 paras 7, 8, 10 amended in relation to England: SI 2001/3830.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/499. Slaughter or killing methods for disease control.

499. Slaughter or killing methods for disease control.

No person may slaughter¹ or kill² any animal³ for the purpose of disease control⁴, or cause or permit any animal to be slaughtered or killed for that purpose, except by one of the following methods: (1) free bullet⁵; (2) electrocution⁶; (3) exposure to carbon dioxide or to a lethal concentration of other gases or gas mixtures⁷; (4) for rabbits and birds, dislocation of the neck⁸; (5) captive bolt⁹; or (6) lethal injection¹⁰.

1 For the meaning of 'slaughter' see PARA 486 note 5 ante.

2 For the meaning of 'killing' see PARA 486 note 6 ante.

3 'Animal' means any soliped, ruminant, pig, rabbit, or bird: Welfare of Animals (Slaughter and Killing) Regulations 1995, SI 1995/731, reg 17, Sch 9 para 1.

4 'Disease control' means the control by the Minister of any disease which is notifiable by or under the provisions of the Animal Health Act 1981: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 9 para 1. For the meaning of 'the Minister' see PARA 487 note 7 ante.

5 Ibid Sch 9 para 2(a).

6 Ibid Sch 9 para 2(b). For special requirements for killing by electrocution see Sch 9 para 3.

7 Ibid Sch 9 para 2(c).

8 Ibid Sch 9 para 2(d).

9 Ibid Sch 9 para 2(e). For specific requirements for stunning by use of captive bolt instrument see Sch 9 para 4.

10 Ibid Sch 9 para 2(f). As to offences and penalties in relation to contravention of the regulations see PARA 495 ante.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

499 Slaughter or killing methods for disease control

TEXT AND NOTES--Also, heads (7) for birds, a pneumatic or cartridge operated percussive device producing immediate death (SI 1995/731 Sch 9 para 2(g) (added, in relation to England, by SI 2003/3273, and, in relation to Wales, by SI 2007/2461)); and, in relation to England only, (8) for birds, ventilation shutdown provided that no one enters the building in which birds are housed save for monitoring purposes until it is ascertained that all of the birds are dead (SI 1995/731 Sch 9 para 2(h) (added by SI 2006/1200)). For specific requirements for killing by ventilation shutdown see SI 1995/731 Sch 9

para 6 (added by SI 2006/1200). See also *R (on the application of the Royal Society for the Prevention of Cruelty to Animals) v Secretary of State for Environment, Food and Rural Affairs* [2008] EWHC 2321 (Admin), [2008] All ER (D) 45 (Oct) (control of dangerous contagious poultry disease by mass slaughter using ventilation shutdown compatible and proportionate with European Union law).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/500. Methods of killing fox and mink.

500. Methods of killing fox and mink.

No person may kill¹, or cause or permit to be killed, any fox which is farmed for its fur, except by administering to the fox a lethal injection of a drug which has anaesthetic properties and causes a rapid loss of consciousness followed by death². Any mink farmed for its fur which is to be killed may only be killed by means of a lethal injection or exposure to carbon monoxide or carbon dioxide³.

1 For the meaning of 'killing' see PARA 486 note 6 ante.

2 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 18, Sch 10 paras 1, 2.

3 Ibid Sch 10 para 3. As to the specific requirements for killing mink see Sch 10 paras 4-6. As to offences and penalties in relation to contravention of the regulations see PARA 495 ante.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/501. Killing of chicks and embryos in hatchery waste.

501. Killing of chicks and embryos in hatchery waste.

No person may kill¹, or permit to be killed, any surplus chick except by the use of a mechanical apparatus producing immediate death, by exposure to gas mixtures or by dislocation of the neck².

Embryos in hatchery waste may only be killed by the use of a mechanical apparatus producing immediate death³.

1 For the meaning of 'killing' see PARA 486 note 6 ante.

2 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, reg 19, Sch 11 para 1. As to the specific requirements relating to these methods of killing see Sch 11 paras 2-4.

3 Ibid Sch 11 para 5. As to the specific requirements for such killing see Sch 11 para 6. As to offences and penalties in relation to contravention of the regulations see PARA 495 ante.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

501 Killing of chicks and embryos in hatchery waste

NOTE 2--SI 1995/731 Sch 11 para 3 amended in relation to England: SI 2000/3352.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(6) METHODS OF SLAUGHTER/502. Slaughter by religious method.

502. Slaughter by religious method.

Slaughter¹ by a religious method may be carried out in a slaughterhouse² provided that such slaughter takes place without the infliction of unnecessary suffering (1) by the Jewish method for the food of Jews by a Jew who holds a slaughterman's licence³ and who is duly licensed by the Rabbinical Commission⁴; or (2) by the Muslim method for the food of Muslims by a Muslim who holds a slaughterman's licence⁵.

No person may slaughter any bovine animal⁶ in a slaughterhouse by a religious method unless the animal is in an upright position in a restraining pen which has been approved by the Minister⁷ and has been installed in such a manner as to ensure that it will operate efficiently⁸. The pen must be of such a size and design and so operated as to protect a bovine animal from any avoidable pain and suffering, and it must effectively restrain the animal confined in it⁹. The pen must be kept in good working order¹⁰. Provision is also made as to the handling of animals during slaughter¹¹ and after slaughter¹². No animal must be placed in a restraining pen unless the person who is carrying out the slaughter is ready to make the incision immediately¹³. Any person who slaughters by a religious method an animal which has not been stunned before bleeding must, before the animal is slaughtered, ensure that the knife to be used is undamaged and of sufficient size and sharpness to be capable of being used to slaughter¹⁴. No person may slaughter any animal by a religious method, or cause or permit any animal to be so slaughtered, elsewhere than in a slaughterhouse¹⁵.

Provision is also made in relation to the slaughter of birds¹⁶ by a religious method¹⁷.

1 For the meaning of 'slaughter' see PARA 486 note 5 ante.

2 For the meaning of 'slaughterhouse' see PARA 489 note 10 ante.

3 I.e. a licence granted pursuant to the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 1: see PARA 487 ante.

4 Ibid Sch 12 para 2(a). As to the membership and quorum of the Rabbinical Commission see Sch 12 paras 11-15.

5 Ibid Sch 12 para 2(b).

6 'Bovine animal' means any ox, bullock, cow, heifer, or steer or any calf which is too large to be restrained manually for slaughter on a cradle or table: ibid Sch 12 para 1.

7 For the meaning of 'the Minister' see PARA 487 note 7 ante.

8 Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 12 para 3(1).

9 Ibid Sch 12 para 3(2).

10 Ibid Sch 12 para 4.

11 Ibid Sch 12 para 5.

12 Ibid Sch 12 para 7.

13 Ibid Sch 12 para 5(a).

14 Ibid Sch 12 para 6.

15 Ibid Sch 12 para 8 (substituted by SI 1999/400). The slaughterhouse must be licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4 (see PARA 478 ante): Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Sch 12 para 8.

16 'Bird' means any turkey, domestic fowl, guinea-fowl, duck, goose or quail: ibid Sch 12 para 1.

17 See ibid Sch 12 paras 9, 10.

UPDATE

486-502 Necessity for slaughterman's licence ... Slaughter by religious method

Functions of the Secretary of State under the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(7) HYGIENE AND INSPECTION/503. Hygiene in slaughterhouses.

(7) HYGIENE AND INSPECTION

503. Hygiene in slaughterhouses.

To ensure compliance with Community provisions concerning hygienic conditions in slaughterhouses¹, regulations exist which govern the construction, layout and equipment in those premises², and their supervision and licensing³. Adequate provision must be made for hygiene and disinfection⁴ and suitable refrigeration equipment must be provided⁵. A clean water supply and satisfactory drainage system must also be provided⁶. Provision is made for the construction of lairages⁷ and slaughterhalls⁸, and for an hygienic system for the dressing and further handling of carcasses⁹ and for the separate treatment of specified parts of animals and rejected meat¹⁰.

General requirements are laid down for the construction and operation of farmed game handling and processing facilities¹¹. There are provisions which relate to the hygiene requirements of staff, premises and equipment generally¹² and there are certain ante-mortem¹³ and post-mortem¹⁴ health inspection requirements. Other provisions concern the health control of cut meat, and the health marking, certification, storage, packing and transport of fresh meat¹⁵.

A slaughterhouse may be used for the slaughter of an animal the meat derived from which is not intended for human consumption where certain emergency conditions are satisfied¹⁶.

1 Ie EEC Council Directive 64/433 (OJ 121, 29.7.64, p 2012) on health problems affecting intra-Community trade in fresh meat (as amended); EEC Council Directive 91/495 (OJ L 268, 24.9.91, p 41) concerning public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat (as amended); and EEC Council Directive 92/45 (OJ L268, 14.9.92, p 35) on public health and animal health problems relating to the killing of wild game and the placing on the market of wild game meat (as amended).

For this purpose 'slaughterhouse' means any building, premises or place (other than a farmed game handling facility) for slaughtering animals the flesh of which is intended for human consumption, including any place in which animals awaiting slaughter are confined: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 2(1). The regulations apply to fresh, including frozen, meat of domestic bovine animals, swine, sheep, goats, solipeds and farmed game, but not to minced meat or mechanically recovered meat, or to fresh meat intended for exhibition, special studies or analysis, for sale to international organisations or for uses other than human consumption: regs 2, 3. As to penalties for offences under the regulations see PARA 505 post.

2 Ibid Schs 1-6 (as amended). Many of these requirements also apply to fresh meat cutting premises, repackaging centres and cold stores: see reg 2(1), Schs 1-6 (as amended). 'Cutting premises' means premises used for the purpose of cutting up fresh meat intended for sale for human consumption; and 'cutting up' means: (1) cutting fresh meat into cuts smaller than half carcasses cut into three wholesale cuts; or (2) removing bones from fresh meat: reg 2(1).

3 See ibid regs 4-7, 8-10. As to the licensing of slaughterhouses see PARA 478 ante.

4 An adequate supply of hot and cold running water, or pre-mixed running water, and soap or other detergent must be provided for the cleansing and disinfection of hands, along with an hygienic means of drying hands: ibid Sch 1 para 1(b), Sch 5 Pt I para 1(b). Facilities for the disinfection of knives and hand tools must be provided: Sch 1 para 1(c), Sch 5 Pt I para 1(c). Schedule 5 applies to low throughput slaughterhouses, ie slaughterhouses processing not more than 1,000 livestock units each year: see reg 2(1) (definition amended by SI 1995/3189). 'Livestock unit' means 1 soliped, 1 adult bovine animal within the meaning of EEC Council Regulation 805/68 (OJ L148, 28.6.68, p 24) (as amended), 2 other bovine animals, 3 deer, 5 swine of over 100 kg liveweight, 7 other swine, 10 sheep or goats, or 20 lambs, kids or piglets of under 15 kg liveweight: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 2(1).

5 Suitable refrigeration equipment must be provided to enable the internal temperature of fresh meat to be maintained at no more than 7° Celsius for carcasses and cuts, 3° Celsius for offal and minus 12° Celsius for frozen fresh meat: *ibid* Sch 1 paras (1)(h), Sch 4(b), Sch 5 Pt 1 para (1)(h).

6 A sufficient, clean and wholesome supply of hot and cold potable water must be available and comply with the standards of EEC Council Directive 80/778 (OJ L 229, 30.8.80, p 11) relating to the quality of water intended for human consumption (as amended): Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 1 para 1(i), Sch 5 Pt I para 1(j) (amended by SI 1995/1763). 'Potable water' has the same meaning as in the Food Safety (General Food Hygiene) Regulations 1995, SI 1995/1763 (see PARA 294 note 6 ante): Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 2(1) (definition added by SI 1995/1763). Satisfactory drainage must be fitted and maintained: see the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 1 para 1(j), Sch 5 Pt I para (k).

7 See *ibid* Sch 2 para 1(b), Sch 5 Pt II para 1(a). The lairage is any part of a slaughterhouse used for the confinement of animals awaiting slaughter there: reg 2(1). It must be adequately lit so as to allow the inspection of animals and must be constructed of impermeable, durable and non-slip material: Sch 2 para 1(b), Sch 5 Pt II para 1(a).

8 See *ibid* Sch 2 para 1(c), Sch 5 Pt II para 1(b). The slaughterhall is that part of the slaughterhouse in which animals are slaughtered or their bodies dressed: reg 2(1). Separate facilities are in general required in the case of diseased or injured animals: see Sch 2 para 1(d).

9 See *ibid* Sch 9.

10 See *ibid* Sch 2 para 1(h)-(u), Sch 5 Pt I para 1(g), Pt II para 1(e)-(n) (amended by SI 1995/3189).

11 See the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 6.

12 See *ibid* Sch 7, which contains detailed requirements for the prevention of contamination of fresh meat, and as to the cleanliness of staff and the clothing to be worn.

13 See *ibid* Sch 8.

14 See *ibid* Sch 10.

15 See *ibid* regs 11, 12.

16 See *ibid* reg 7 (amended by SI 1995/731; SI 1997/2074).

UPDATE

503-506 Hygiene and Inspection

SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

503 Hygiene in slaughterhouses

NOTE 1--As to the adequacy of the transposition of Directive 64/433 into national law see Case C-445/06 *Danske Slagterier v Germany* [2010] All ER (EC) 74, ECJ.

NOTE 12--A breach of SI 1995/539 Sch 7 is a criminal offence: *Holmes v Ministry of Agriculture, Fisheries & Food* [2000] EHLR 369.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(7) HYGIENE AND INSPECTION/504. Supervision, inspection and marking.

504. Supervision, inspection and marking.

The Food Standards Agency¹ must appoint, in relation to any slaughterhouse², one or more designated official veterinary surgeons (OVSs) to act in relation to the examination and seizure of meat, to provide the health certification of fresh meat and to be responsible for the inspection of animals and for securing the observance of the requirements of the regulations³.

Where fresh meat intended for sale for human consumption has been passed fit for human consumption following ante-mortem and post-mortem health inspections⁴ and complies with the requirements of the regulations, it must be marked in accordance with the statutory requirements⁵. No other meat may be so marked⁶.

No person may remove, or cause or permit to be removed, from a slaughterhouse any blood or any carcase or part of a carcase or any offal intended for sale for human consumption or any offal from a slaughtered animal intended for sale for human consumption until it has been inspected in accordance with the regulations⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 For the meaning of 'slaughterhouse' see PARA 503 note 1 ante.

3 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 8(1) (amended by SI 2000/225; and SI 2000/656). As to the revocation and suspension of designations of OVSs see the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 9 (amended by SI 2000/656). Inspectors must also be appointed to act under the supervision of an OVS: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 8(2)-(4) (reg 8(2), (3) amended by SI 2000/656). As to powers of veterinary inspectors in respect of an occupier's failure to comply with the regulations see the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 10 (amended by SI 2000/225). As to the charges for inspections see the Meat (Hygiene and Inspection) (Charges) Regulations 1998, SI 1998/2095 (as amended).

4 Ante-mortem and post-mortem health inspections must be carried out in accordance with the requirements of the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, Sch 8 and Sch 10 (amended by SI 2000/656) respectively: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 11(1) (amended by SI 2000/656).

5 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 11(2). As to the application of health marks see reg 11(5), (6). Marks resembling health marks may not be used: reg 11(7).

6 Ibid reg 11(3).

7 Ibid reg 11(4).

UPDATE

503-506 Hygiene and Inspection

SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

504 Supervision, inspection and marking

NOTE 3--SI 1998/2095 revoked: SI 2005/2983 (England); SI 2005/3370 (Wales). See now the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(7) HYGIENE AND INSPECTION/505. Notices, records and enforcement.

505. Notices, records and enforcement.

No person may operate any licensed premises to produce fresh meat for sale for human consumption unless he has notified the Food Standards Agency¹ of the day on which and the time and place at which they are to be operated². The occupier of any licensed premises³ is required to keep certain records and fulfil other duties in connection with the administration of the premises⁴.

The Food Standards Agency is required to keep certain records in respect of individual licensed premises⁵, and is responsible for enforcing the regulations⁶, breaches of which carry penalties⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 12(1) (amended by SI 2000/656). If the operation is to be slaughter, in general not less than 24 hours' notice must be given: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 12(2) (amended by SI 2000/656). Special provisions apply in the case of injured animals: see the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 12(4)-(7) (reg 12(5) amended by SI 2000/656).

3 The premises licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 4 (as amended): see PARA 478 ante.

4 See *ibid* reg 20 (amended by SI 2000/225; and SI 2000/656). Such duties include keeping a record of the number of animals received each week, taking practical steps to ensure compliance with the regulations and assisting the veterinary inspector in the execution of his duties: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 20(1) (as so amended).

5 See the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 19 (amended by SI 2000/656), under which the Food Standards Agency is required to record the results of post-mortem and ante-mortem health inspections.

6 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 23 (substituted by SI 2000/225).

7 Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 21 (amended by SI 1995/3189; SI 2000/225; and SI 2000/656). A person breaching the regulations is liable: (1) on summary conviction, a fine not exceeding the statutory maximum and (2) on conviction on indictment, a fine or imprisonment for not more than two years or both: Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539, reg 21 (as so amended). As to the statutory maximum see PARA 261 note 22 ante.

UPDATE

503-506 Hygiene and Inspection

SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(7) HYGIENE AND INSPECTION/506. Sterilization and disposal of animal by-products.

506. Sterilization and disposal of animal by-products.

It is the duty of the occupier¹ of a slaughterhouse to ensure that any animal by-product² is sterilized or stained immediately³. No person may freeze any such product unless it has been sterilized or stained as required⁴. Unsterilized animal by-products may not be stored in the same room as any product which is intended for human consumption⁵, and may not be stored in premises used for storing products fit for human consumption unless the unsterilized by-products are packaged and labelled in accordance with specified requirements⁶. Subject to certain exceptions⁷, animal by-products should not be moved from any slaughterhouse unless they have been sterilized or stained⁸.

The Food Standards Agency in relation to England and Wales is required to enforce these provisions in relation to premises licensed under the hygiene regulations⁹ and the relevant food authority¹⁰ must enforce them in any other case¹¹. The relevant port health authority is required to enforce and execute the provisions in relation to animal by-products imported into the country¹². Any person who contravenes or fails to comply with the provisions is guilty of an offence¹³.

Certain high risk¹⁴ and other animal by-products must be disposed of without delay by approved methods. Any person who has in his possession or under his control any animal by-product must without undue delay consign it for, or dispose of it by:

- 405 (1) rendering or part-rendering in approved premises¹⁵;
- 406 (2) incineration¹⁶;
- 407 (3) burning other than in an incinerator, or burying, if it is a place where access is difficult, or the quantity of by-product and the distance to premises in which disposal is otherwise permitted do not justify transporting it¹⁷;
- 408 (4) use for diagnostic, educational or research purposes¹⁸;
- 409 (5) in the case of low risk material¹⁹, production of petfood or pharmaceutical or technical products, or storage for the production of petfood, at registered premises²⁰;
- 410 (6) treatment at an approved knacker's yard²¹, or feeding to zoo, circus or fur animals, recognised packs of hounds or maggots farmed for fishing bait at registered premises²², provided that the material consigned is: (a) a by-product²³; or (b) low risk material²⁴; or
- 411 (7) export from Great Britain²⁵.

In certain circumstances the person in charge of any animal by-product can be required to dispose of the product by burning or burial²⁶.

Any person collecting or transporting animal by-products must:

- 412 (i) use adequately covered leak-proof containers or vehicles²⁷;
- 413 (ii) maintain vehicles, tarpaulins or other covers and reusable containers in a clean condition²⁸; and
- 414 (iii) where animal by-products derived from animals or fish fit for human consumption are transported in bulk directly to rendering premises, label the container with the source and description of the animal by-product, and the words 'Not for human consumption' in clearly visible and legible letters at least two centimetres high²⁹.

An inspector may serve a notice requiring a person to dispose of any animal by-product³⁰. If an inspector suspects that any vehicle, container or premises constitutes a disease risk he may require the person in charge of the vehicle or container, or the occupier of the premises, to clean and disinfect³¹. An inspector also has power to inspect, take samples and examine and copy records³².

1 'Occupier' means a person carrying on the business of a slaughterhouse, or the duly authorised representative of such a person: Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 2(1). These regulations also apply in respect of game processing facilities and animal by-products premises, as defined.

2 'Animal by-product' means any carcase or part of a carcase which is not intended for direct human consumption and which: (1) is derived from an animal which (a) has died; (b) has been killed in a knacker's yard; (c) has been killed in a place other than a slaughterhouse; (d) is stillborn or unborn; (e) has been killed for reasons of disease control; (f) has been slaughtered for human consumption and, during the ante-mortem or post-mortem inspection carried out in connection with such slaughter, has shown signs of any disease communicable to humans or animals; or (g) has been slaughtered for human consumption but has not been presented for post-mortem inspection in accordance with the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended) (see PARAS 478, 503 et seq ante) and the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540 (as amended) (see PARA 530-531 ante); (2) is spoiled in any way so as to present a risk to human or animal health; or (3) contains residues of any substances which may pose a risk to human or animal health: Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 3(1) (amended by SI 1997/2073). 'Animal by-product' does not include any animal excreta or catering waste or meat cooked at a knacker's yard for use as food for animals whose flesh is not intended for human consumption: Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 3(2). The definition of 'animal by-product' also includes any carcase or part of a carcase which is derived from a bovine animal which has been slaughtered for human consumption and has been shown to be more than two years and six months old at the time of slaughter but was not accompanied, at the time of slaughter, by a slaughter certificate issued under the Beef Assurance Scheme or any other scheme made by the Food Standards Agency or any Secretary of State which provides an exception to the prohibition of sale of meat from bovine animals which are older than that age at slaughter: reg 3(3) (added by 1997/2073; and amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

'Animal' includes bovine animals, solipeds, swine, sheep, goats, poultry, rabbits and farmed and wild game: Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 2(1). 'Carcase' means the body of a dead animal: reg 2(1). The requirement for sterilization or staining does not apply in respect of an entire dead animal: reg 4(a). Certain types of offal, waste and other by-products are exempt: see reg 5 (amended by SI 1995/1955; SI 1996/3124).

3 Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 6(1). By-products may instead be placed in a receptacle designed for the purpose and sterilized or stained as soon as is reasonably practicable: see reg 6(2), (3). For the meaning of 'stained', and 'sterilized' see reg 2(1).

4 Ibid reg 8.

5 Ibid reg 9(1).

6 Ibid reg 9(2).

7 Ibid reg 10(2).

8 Ibid reg 10(1).

9 Ibid reg 12(1)(a) (amended by SI 2000/656). As to licensing under the hygiene regulations see PARA 478 ante.

10 'Food authority' does not include the council of a non-metropolitan county: Animal By-Products (Identification) Regulations 1995, SI 1995/614, reg 12(3). As to food authorities see PARA 251 et seq ante.

11 Ibid reg 12(1)(b).

12 Ibid reg 12(2).

13 Ibid reg 14. Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 14. As to the statutory maximum see PARA 261 note 22 ante.

14 'High risk material' means animal by-products of the following description, or any material containing such by-products:

- 32 (1) animal by-products which present a serious risk of spreading communicable disease to man or animals;
- 33 (2) all animals kept for agricultural production, which have died or been killed but were not slaughtered for human consumption, including stillborn animals and fetuses but excluding animals slaughtered during transit for reasons of their welfare;
- 34 (3) dead animals not referred to in head (2) supra but which are designated as high risk material by notice by the appropriate Minister;
- 35 (4) animals (other than those slaughtered for human consumption) which are killed in the context of disease control measures;
- 36 (5) animal by-products (including blood) from animals which, during pre-slaughter veterinary inspection, show clinical signs of disease communicable to man or animals;
- 37 (6) fish which show clinical signs of disease communicable to man or fish;
- 38 (7) all animal by-products (other than hides, skins, hooves, feathers, wool, horns, blood and similar products) which are from animals (other than fish, crustaceans or molluscs) slaughtered in the normal way if either: (a) the animal by-product is not presented for post-mortem veterinary inspection; or (b) during post-mortem veterinary inspection the animal by-product shows gross pathological lesions indicating disease communicable to man or animals;
- 39 (8) all meat, poultrymeat, fish, game and foodstuffs of animal origin which are spoiled in such a way that they present a risk to human or animal health;
- 40 (9) animal by-products from animals, fish or game, fresh meat, poultrymeat, meat products and milk products imported from any country other than a member state which fail to comply with the veterinary requirements for their importation into the Community, unless they are re-exported or their import is accepted under restrictions laid down in Community provisions; or
- 41 (10) animal by-products containing residues of substances which may pose a danger to human or animal health, or milk, meat or products of animal origin rendered unfit for human consumption by the presence of such residues: Animal By-Products Order 1999, SI 1999/646, art 3(1).

'Animal by-products' means: (i) animal carcasses; (ii) parts of animal carcasses (including blood); or (iii) products of animal origin, not intended for human consumption, with the exception of animal excreta and catering waste: art 3(1). As to records for animal by-products see art 17.

15 Ibid art 5(1)(a). As to the approval of premises and equipment for rendering animal by-products see art 7, Schs 1, 2, 3. As to the operation of approved rendering plants see art 8. As to sampling the rendered product see art 9.

16 Ibid art 5(1)(b). As to incineration see art 10.

17 Ibid art 5(1)(c). As to burial of animal by-products see art 11.

18 Ibid art 5(1)(d). As to the approval and operation of laboratories see art 16. As to records for laboratories see art 18.

19 'Low risk material' means animal by-products other than high-risk material: ibid art 3(1).

20 Ibid art 5(1)(e). Petfood, pharmaceutical and technical premises are registered under art 12.

21 As to the approval of knackers' yards see ibid art 14; and as to the operation of knackers' yards and the supply of feedingstuffs from knackers' yards see art 15.

22 As to the registration of premises used for the feeding of animal by-products to zoo, circus or fur animals, recognised packs of hounds or maggots farmed for fishing bait see ibid art 13.

23 le a by-product referred to in note 15 heads (2), (3) or (7)(a) supra (provided that it is not from an animal slaughtered as a result of the presence or suspected presence of a notifiable disease listed in EEC Council Directive 82/894 (OJ L378, 31.12.82, p 58) on the notification of animal diseases within the Community, Annex I (as amended).

24 Animal By-Products Order 1999, SI 1999/646, art 5(1)(f).

25 Ibid art 5(1)(g). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

26 Ibid art 5(2).

27 Ibid art 6(a).

28 Ibid art 6(b).

29 Ibid art 6(c).

30 See ibid art 27.

31 See ibid art 28.

32 See ibid art 29.

UPDATE

503-506 Hygiene and Inspection

SI 1995/539 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

506 Sterilization and disposal of animal by-products

TEXT AND NOTES 1-3--SI 1995/614 reg 6 substituted, in relation to England, by SI 2006/14, and, in relation to Wales, by SI 2006/31. Now, it is the duty of the occupier of any cold store, cutting plant, game-handling establishment or slaughterhouse to ensure that any animal by-product is stained without undue delay (SI 1995/614 reg 6(1) (reg 6 as so substituted)), but this does not apply in relation to any animal by-product which (1) is (a) immediately moved to accommodation in the relevant cold store, cutting plant, game-handling establishment or slaughterhouse; (b) placed in a suitable, sufficient and lockable receptacle with closely fitting covers that is only used for holding meat rejected as unfit for human consumption and is clearly marked to that effect; and (c) stained by the operator concerned as soon as practicable after it has been placed in the receptacle; or (2) is immediately moved to an approved rendering plant for rendering there, or to an approved incineration plant which is adequately separated from the cold store, cutting plant, game-handling establishment or slaughterhouse concerned for incineration there, through a sealed and leak-proof pipe which connects the cold store, cutting plant, game-handling establishment or slaughterhouse concerned directly with the relevant approved rendering plant or, as the case may be, approved incineration plant (reg 6(2), (4) (reg 6 as so substituted)); and the occupier of any cold store, cutting plant, game-handling establishment or slaughterhouse must ensure that any animal by-product which is placed in a receptacle in accordance with head (1)(b), (c) is stained and removed from the relevant cold store, cutting plant, game-handling establishment or slaughterhouse as soon as is reasonably practicable (reg 6(3) (reg 6 as so substituted)).

'Occupier' means a person carrying on the business of any cold store, cutting plant, game-handling establishment, slaughterhouse or animal by-products premises, or the

duly authorised representative of such a person: SI 1995/614 reg 2(1) (definition substituted by SI 2006/14 (England), SI 2006/31 (Wales)). 'Cold store' means any premises, not forming part of a cutting plant, game-handling establishment or slaughterhouse, used for the storage, under temperature-controlled conditions, of fresh meat intended for sale for human consumption: SI 1995/614 reg 2(1) (definition substituted by SI 2006/14 (England), SI 2006/31 (Wales)). 'Cutting plant', 'game-handling establishment' and 'slaughterhouse' have the meanings that they bear in the Food Hygiene (England) Regulations 2006, SI 2006/14, reg 5(6) and the Food Hygiene (Wales) Regulations 2006, SI 2006/31, reg 5(6) (see PARA 293A.2): SI 1995/614 reg 2(1) (definitions added by SI 2006/14 (England), SI 2006/31 (Wales)). Definition of 'stained' substituted: SI 1995/614 reg 2(1) (amended by SI 2002/1472 (Wales), SI 2002/1619 (England)). 'Animal by-products premises' means premises, other than a cold store, cutting plant, game-handling establishment or slaughterhouse, from which animal by-products are despatched to other premises: SI 1995/614 reg 2(1) (definition substituted by SI 2006/14 (England), SI 2006/31 (Wales)). 'Fresh meat' means meat that has not undergone any preserving process other than chilling, freezing or quick freezing, including meat that is vacuum-wrapped or wrapped in a controlled atmosphere: SI 1995/614 reg 2(1) (definition added by SI 2006/14 (England), SI 2006/31 (Wales)).

TEXT AND NOTE 2--SI 1995/614 reg 3 further amended: SI 2003/1849 (Wales). The requirement for staining does not apply in respect of an entire carcass, except an entire poultry carcass which is dead on arrival at a slaughterhouse or which is rejected following pre-slaughter or post-mortem health inspections carried out at a slaughterhouse in accordance with the Food Hygiene (England) Regulations 2006, SI 2006/14, or the Food Hygiene (Wales) Regulations 2006, SI 2006/31: SI 1995/614 reg 4(a) (reg 4 substituted in relation to Wales by SI 2002/1472, and amended by SI 2003/1849, SI 2006/31; SI 1995/614 reg 4 substituted in relation to England by SI 2002/1619, and amended by SI 2002/3231, SI 2006/14). SI 1995/614 reg 5 further amended: SI 2002/1472 (Wales), SI 2002/1619 (England), SI 2003/1484 (England), SI 2003/1849 (Wales), SI 2006/14 (England), SI 2006/31 (Wales).

NOTE 2--Definition of 'animal by-product' amended, omitting the word 'direct': SI 1995/614 reg 3(1) (amended by SI 2002/3231 (England), SI 2003/1849 (Wales)). Now the definition of 'animal by-product' also includes (1) any product subject to the prohibition imposed by the Bovine Products (Restriction on Placing on the Market) (England) (No 2) Regulations 2005, SI 2005/3068 (amended by SI 2007/1755) or the Bovine Products (Restriction on Placing on the Market) (Wales) (No 2) Regulations 2005, SI 2005/3296; and (2) any bovine carcass or body part in respect of which a direction for disposal has been given under the TSE (England) Regulations 2002, SI 2002/843, reg 10A(5) or the TSE (Wales) Regulations 2002, SI 2002/1416: SI 1995/614 reg 3(3) (substituted by SI 2005/3068 (England), SI 2005/3296 (Wales)).

TEXT AND NOTE 4--Now, no person may freeze any animal by-product in any animal by-products premises, cold store, cutting plant, game-handling establishment or slaughterhouse unless it has been stained in accordance with SI 1995/614, but this does not apply in the case of any animal by-product which is intended to be removed from the relevant animal by-products premises, cold store, cutting plant, game-handling establishment or slaughterhouse in accordance with reg 10(2): reg 8 (substituted, in relation to England by SI 2006/14, and, in relation to Wales, by SI 2006/31).

TEXT AND NOTES 5, 6--SI 1995/614 reg 9 substituted in relation to Wales by SI 2002/1472, and amended by SI 2003/1849, SI 2003/2754, SI 2006/31. SI 1995/614 reg 9 substituted in relation to England by SI 2002/1619, and amended by SI 2002/3231, SI 2006/14. The prohibition of storing animal by-products in the same room as a product

intended for human consumption does not apply in relation to any animal by-product which is stored in a suitable sufficient and lockable receptacle with closely fitting covers that is only used for holding meat rejected as unfit for human consumption and is clearly marked to that effect: SI 1995/614 reg 9(2) (reg 9 as so substituted and amended). For 'premises used for storing products fit for human consumption' read 'a cold store, cutting plant, game-handling establishment or slaughterhouse': reg 9(3) (reg 9 as so substituted and amended).

TEXT AND NOTES 7, 8--SI 1995/614 reg 10 substituted in relation to Wales: SI 2002/1472, and amended by SI 2003/1849, SI 2003/2754, SI 2006/31. SI 1995/614 reg 10 substituted in relation to England by SI 2002/1619, and amended by SI 2002/3231, SI 2003/1484, SI 2006/14.

TEXT AND NOTES 9-11--For 'in relation to ... any other case' read 'in relation to any cutting plant, game-handling establishment or slaughterhouse, and in relation to any other premises, the Food Standards or the food authority within whose area the premises are situated must enforce them': SI 1995/614 reg 12(1) (amended, in relation to England, by SI 2006/14, and, in relation to Wales, by SI 2006/31).

NOTE 14--SI 1999/646 art 3(1) amended in relation to England: SI 2001/1704, SI 2002/3231. SI 1999/646 art 3(1) amended in relation to Wales: SI 2001/1735.

NOTE 15--SI 1999/646 Schs 1, 2 amended in relation to England: SI 2001/1704. SI 1999/646 Schs 1, 2 amended in relation to Wales: SI 2001/1735.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(8) GRADING AND MARKING OF CARCASSES/507. Classification and marking of carcasses.

(8) GRADING AND MARKING OF CARCASSES

507. Classification and marking of carcasses.

For the purpose of providing a standard method of describing as fully as practicable those characteristics of a carcase¹ which are the principal features of interest to persons trading in livestock and carcasses, the Meat and Livestock Commission² is required to compile systems for the descriptive classification of the carcasses of all types of livestock³ slaughtered in Great Britain⁴ and for marking carcasses according to that classification⁵.

When the Commission is satisfied that its proposed system is practicable, that it has obtained sufficient experience of the operation of the system and that it has the resources and facilities required to operate it, it must submit particulars of the scheme to the Minister of Agriculture, Fisheries and Food⁶, who may, on the commission's recommendation, by order⁷ make such a system compulsory⁸. The order may impose duties and restrictions on any persons, especially those having control of slaughterhouses⁹, may impose restrictions on the cutting, removal and marking of carcasses¹⁰, may require records to be kept¹¹, may authorise the Minister to give the Commission directions as to the operation of the system¹², and may make necessary or expedient incidental or supplemental provisions¹³.

Failure to comply with such an order is an offence¹⁴, unless the person charged proves that the commission of the offence was due to an act or default of some other person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by him or any person under his control¹⁵. A person who wilfully obstructs an authorised officer of the Commission in the performance of his duty is guilty of an offence¹⁶.

If a person with intent to deceive removes, alters, conceals or defaces any mark applied under the above system, or applies to any carcase, without due authority and with intent to deceive, any similar mark, or wilfully makes a false entry in any record required to be kept by any order or, with intent to deceive, makes use of any such entry which he knows to be false, he is guilty of an offence¹⁷.

For the purpose of ascertaining whether an offence has been committed, an authorised officer of the Commission, on producing (if required) his authority, may require a person carrying on or managing a slaughterhouse or certain other undertakings¹⁸ to produce any books, accounts or records relating to the conduct of the undertaking, and may take copies or extracts¹⁹. Any person who fails to comply with such a requirement is guilty of an offence²⁰.

1 'Carcasses' means whole carcasses and sides, quarters and other wholesale cuts: Agriculture Act 1967 s 25(2).

2 As to the Meat and Livestock Commission see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1058 et seq.

3 'Livestock' means cattle, sheep and pigs: Agriculture Act 1967 s 25(2).

4 Systems may be compiled or modified for the descriptive classification and marking of imported carcasses: *ibid* s 5(2). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

5 *Ibid* s 5(1). The Commission must take steps to bring the system to the notice of those concerned and may enter into arrangements to operate the system on behalf of others: s 5(3).

6 Ibid s 5(4). As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

7 The order is made by statutory instrument, which may be varied or revoked by a subsequent order: *ibid* s 6(10). Before being made a draft of any order must be laid before and approved by resolution of each House of Parliament: s 6(11).

8 See *ibid* s 6(1). The order may specify the carcasses to which it is to apply by reference to the type of livestock and carcase, may distinguish between imported carcasses and carcasses of livestock slaughtered in Great Britain, and may make other distinctions for different cases: s 6(2). It is to be subject to such exceptions and exemptions as may be made by or under the order: s 6(2). At the date at which this volume states the law, no such order had been made.

9 *Ibid* s 6(3)(a).

10 *Ibid* s 6(3)(b).

11 *Ibid* s 6(3)(c).

12 *Ibid* s 6(3)(d).

13 *Ibid* s 6(3)(e).

14 *Ibid* s 6(4). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or imprisonment not exceeding three months or both: s 6(4). As to the standard scale see PARA 242 note 18 ante.

15 *Ibid* s 6(4) proviso. A person intending to rely on this defence must give the prosecutor 14 days' written notice of his intention, specifying the name and address of the other person, and must give a similar notice to that person, who is entitled to appear at the hearing and give evidence: s 6(5). That other person may be charged and convicted: see s 6(6).

16 *Ibid* s 6(7). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 6(7).

17 *Ibid* s 6(8). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment not exceeding three months or both, or, on conviction on indictment, to a fine or to imprisonment not exceeding two years or both: s 6(8). As to the prescribed sum see PARA 261 note 22 ante.

18 Is an undertaking for the slaughter of livestock or for the storage, processing, grading, classification, packing or cutting of carcasses, or for the sale of carcasses by wholesale: *ibid* s 6(9).

19 *Ibid* s 6(9).

20 *Ibid* s 6(9). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months or both: s 6(9).

UPDATE

507 Classification and marking of carcasses

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(8) GRADING AND MARKING OF CARCASES/508. Grading of carcasses.

508. Grading of carcasses.

The Minister of Agriculture, Fisheries and Food¹ may require the occupiers of slaughterhouses at which livestock carcasses are required to be graded in pursuance of any Community obligation to pay to him in respect of the supervision of the grading by his officers such fees as he may with the approval of the Treasury specify². Such fees are to be such as to secure, as far as practicable, that the amounts payable are sufficient, taking one year with another, to cover the cost of the supervision³. Before making any decision as to the total fees to be so recovered, or the method of apportioning them between the persons liable to pay them, the Minister must consult with such organisations as appear to him to be representative of those persons⁴. The Minister may permit payment of any fees by instalments, and may arrange for the refund, adjustment, set-off, waiver or reduction of the whole or part of any such fee in such cases as he may determine⁵.

The Minister may require the occupiers of slaughterhouses to keep and preserve such records, to make such annual or other returns and to provide him with such other information as he may reasonably require for the purpose of determining whether any, and if so, what fees are payable by them under these provisions⁶. For this purpose, any officer of the Minister may on producing, if required, written evidence of his authority enter and inspect any slaughterhouse and any carcase in it, and require the occupier to produce for inspection, and allow the officer to make a copy of, or extracts from, any records relevant for that purpose and remove any such record for a reasonable period⁷. Any person who without reasonable excuse fails to comply with such a requirement or who intentionally obstructs any officer in the exercise of his powers of entry is guilty of an offence⁸. Any person who makes a statement, for the purpose of avoiding payment, or payment in full, of any fee for which he is liable, which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, is guilty of an offence⁹.

1 As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437. As respects Wales, this function is exercised by the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, reg 2, Sch 1. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Agriculture and Forestry (Financial Provisions) Act 1991 s 2(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Ibid s 2(2). Different fees may be specified in relation to slaughterhouses of different classes or descriptions, but s 2 is not to be construed as requiring the fees payable in the case of any particular slaughterhouse to be related to the cost of supervision at that slaughterhouse or as precluding exceptions from the liability to pay fees: s 2(3).

As to the administration and enforcement of the Community system of classification of beef carcasses in Great Britain see the Beef Carcase (Classification) Regulations 1991, SI 1991/2242 (amended by SI 1994/2853, SI 1998/12). As to the administration and enforcement of Community system of classification for grading pig carcasses in Great Britain see the Pig Carcase (Grading) Regulations 1994, SI 1994/2155, which implement EC Council Regulation 3220/84 (OJ L301, 20.11.84, p 1) determining the Community scale for grading pig carcasses (as amended) and EC Council Regulation 2967/85 (OJ L285, 25.10.85, p 39) laying down detailed rules for the application of the Community scale for grading pig carcasses (as amended). For the meaning of 'Great Britain' see PARA 206 note 1 ante.

4 Agriculture and Forestry (Financial Provisions) Act 1991 s 2(4).

5 Ibid s 2(5).

6 Ibid s 2(6).

7 Ibid s 2(7).

8 Ibid s 2(8). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 2(8). As to the standard scale see PARA 242 note 18 ante.

9 Ibid s 2(9). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 2(9).

UPDATE

508 Grading of carcasses

NOTE 1--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

NOTE 3--SI 1994/2155 amended: SI 2006/2192 (England), SI 2004/106 (Wales), SI 2008/576. SI 1991/2242 replaced in relation to England: Beef Carcase (Classification) (England) Regulations 2004, SI 2004/1317. SI 1991/2242 further amended: SI 2008/576.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(i) Introduction/509. Control of specified risk material.

(9) SPECIFIED RISK MATERIAL

(i) Introduction

509. Control of specified risk material.

'Specified risk material' is, broadly speaking, material which may contain the agent containing bovine spongiform encephalopathy (BSE)¹. Provision has been made prohibiting the use of such material in feeding stuffs and cosmetic, pharmaceutical and medical products², and controlling its sale and use in food³. There are also provisions governing the removal of specified risk material from slaughtered animals and its subsequent destruction⁴, and trade restrictions in respect of bovine animals and by-products⁵.

1 For the full statutory definition of 'specified risk material' see PARAS 510, 517 note 1 post.

2 See PARAS 510-516 post.

3 See PARAS 517-523 post.

4 See PARAS 524-525 post.

5 See PARAS 526-529 post.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/510. Feeding stuffs.

(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products

510. Feeding stuffs.

Provisions have been made which deal with specified risk material¹. Specified risk material is divided into class I specified risk material² and class II specified risk material³.

The following practices are prohibited:

- 415 (1) the sale of specified risk material for, and the use of such material in, the preparation of any feeding stuff⁴;
- 416 (2) the sale of specified risk material or any feeding stuff containing such material for the feeding to any creature⁵; and
- 417 (3) subject to one exception⁶, the feeding to any creature of any specified risk material, any feeding stuff containing such material or a whole carcase or any part of a sheep, goat or bovine animal from which such material has not been removed⁷.

¹ ie the Specified Risk Material Order 1997, SI 1997/2964.

² 'Class I specified risk material' means (1) class I specified bovine material; and (2) class I specified sheep or goat material, but does not include material derived from animals which were slaughtered or died outside the United Kingdom before 1 January 1998 or which were born, reared and slaughtered in Australia or New Zealand: art 2(1). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

'Class I specified bovine material' means in relation to a bovine animal (a) the skull, including the brain and eyes, tonsils and spinal cord, of an animal which was slaughtered or died outside the United Kingdom at an age greater than 12 months; and (b) the brains, spinal cord, thymus, tonsils, spleen and intestines of an animal which was slaughtered or died in the United Kingdom at an age greater than six months, and also the skull, including the eyes, of such an animal which was aged more than 12 months at the time of death: arts 2(1), 4(1).

'Class I specified sheep or goat material' means (i) in relation to material derived from a sheep or goat which at the time it was slaughtered or died either had one or more permanent incisor teeth erupted through the gum or was aged more than 12 months, the skull, including the brain and eyes, the tonsils, and the spinal cord; and (ii) the spleen of a sheep or goat: arts 2(1), 3(1).

³ Specified Risk Material Order 1997, SI 1997/2964, art 2(1). 'Class II specified risk material' means (1) class II specified bovine material; (2) class II specified sheep or goat material; (3) any part of the animal remaining attached to class I or II specified bovine material or class I or II specified sheep or goat material after dissection of the carcase; (4) any animal material which comes into contact with class I or II specified bovine material or class I or II specified sheep or goat material after it has been removed from the carcase; and (5) specified solid waste: art 2(1).

'Class II specified bovine material' means in relation to a bovine animal (a) the head of an animal which was slaughtered or died in the United Kingdom at an age of six months or over, except any part of the head which is class I specified bovine material, and the tongue, where it is removed from the head immediately after slaughter and before the head is stained in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended) (see PARA 518 post); and (b) the thymus and intestines of an animal which died or was slaughtered in the United Kingdom at an age of two months or over but less than six months, or was slaughtered in the United Kingdom at an age of less than two months for human consumption: Specified Risk Material Order 1997, SI 1997/2964, arts 2(1), 4(2).

'Class II specified sheep or goat material' means the head of any sheep or goat which was slaughtered or died in the United Kingdom except (i) any part of it which is class I specified sheep or goat material; (ii) the horns, where they are removed from the head immediately after slaughter, before the head is removed from the carcase, and without breaking into the cranial cavity; and (iii) the tongue, where it is removed from the head

immediately after slaughter and before the head is stained in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended): Specified Risk Material Order 1997, SI 1997/2964, arts 2(1), 3(2).

'Specified solid waste' means any solid matter resulting from the slaughter of bovine animals, sheep or goats, or from the subsequent processing of their carcasses, which is collected in any part of the drainage system draining any place where specified bovine or sheep or goat material is handled: art 2(1). 'Intestines' means that part of the digestive tract of a bovine animal from the junction of the abomasum and the duodenum to, and including, the rectum and anal sphincter: art 2(1).

4 Ibid art 8(1), (2). See note 6 *infra*. 'Feeding stuff' has the meaning given to it by the Agriculture Act 1970 s 66(1) (as substituted) (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 941) save that it applies to products and substances for oral feeding to any creature except a human being: Specified Risk Material Order 1997, SI 1997/2964, art 2(1). A feeding stuff will be treated as containing specified risk material if it contains anything derived from it: art 8(6)(b).

5 Ibid art 8(3). 'Creature' does not include a human being: art 8(6)(a).

6 Ibid art 8(4) (see the text and note 7 *infra*) does not apply to the feeding to any creature of any specified risk material or feeding stuff for research purposes in a research establishment under the authority of a licence issued by a veterinary inspector of the Minister and in accordance with any conditions subject to which the licence is issued, and art 8(2) (see the text and note 4 *supra*) does not apply to the use of any specified risk material in the preparation of any feeding stuff for such feeding: art 8(5).

7 Ibid art 8(4). It is a defence for any person charged with an offence under heads (1)-(3) in the text to prove that he did not know or have any reason to believe that the material was, or the feeding stuff contained, specified risk material: art 8(7).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

510 Feeding stuffs

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/511. Cosmetic, pharmaceutical and medical products.

511. Cosmetic, pharmaceutical and medical products.

The sale of any UK specified risk material¹ for use in the preparation or manufacture of any cosmetic, pharmaceutical or medical product, and the use of any such material in the preparation or manufacture of any ingredient to be sold for use in the preparation or manufacture of any such product, are both prohibited².

1 'UK specified risk material' means specified risk material derived from an animal which has died or was slaughtered in the United Kingdom: Specified Risk Material Order 1997, SI 1997/2964, art 2(1). For the meaning of 'specified risk material' see PARA 510 ante. For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

2 Ibid art 7(1), (2). The prohibitions extend to anything derived from UK specified risk material as if it were UK specified risk material: art 7(3). It is a defence for any person charged with an offence in respect of an alleged breach of art 7(1) or (2) to prove that he did not know or have reason to believe that the material was, or was derived from, UK specified risk material: art 7(4).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/512. Removal of brain and eyes.

512. Removal of brain and eyes.

The removal of the brain or eyes from the carcase of a bovine animal aged over six months, or from the carcase of a sheep or goat of any age at death, is prohibited, except for the purposes of veterinary or scientific examination or research, and in a part of the premises kept free at all times from food¹, feeding stuffs² and any cosmetic, pharmaceutical or medicinal product³.

¹ For the meaning of 'food' see PARA 201 ante; definition applied by the Specified Risk Material Order 1997, SI 1997/2964, art 2(1).

² For the meaning of 'feeding stuff' see PARA 510 note 4 ante.

³ Specified Risk Material Order 1997, SI 1997/2964, art 9.

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/513. Imports.

513. Imports.

No person may import into Great Britain¹, otherwise than from the British Islands²:

- 418 (1) any class I specified risk material³, except where it is to be transported directly to approved premises⁴; or
- 419 (2) any one of a number of specified food or feeding stuffs⁵, except a food or feeding stuff which does not contain any class I specified risk material, and which is accompanied by a certificate in the prescribed form⁶ issued by the appropriate veterinary authority of the place from which the food or feeding stuff was dispatched⁷.

1 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

2 For the meaning of 'British Islands' see PARA 308 note 10 ante.

3 For the meaning of 'class I specified risk material' see PARA 510 note 2 ante.

4 'Approved premises' means premises approved for the purposes of the Specified Risk Material Order 1997, SI 1997/2964, art 10 (see PARA 516 post): art 2(1). Transportation to approved premises must take place without delay: art 6(2). However, where a person transporting such material is charged with an offence in respect of an alleged breach of art 6(2), it is a defence for him to prove that he took all reasonable steps to comply with that provision: art 6(6).

5 I.e. those listed in ibid Sch 1. For the meaning of 'food' see PARA 201 ante; definition applied by art 2(1). For the meaning of 'feeding stuff' see PARA 510 note 4 ante.

6 I.e. the form set out in ibid Sch 2.

7 Ibid art 6(1). Contravention of, or failure to comply with, art 6 amounts to an offence to which the Animal Health Act 1981 s 76(3) (see ANIMALS vol 2 (2008) PARA 1098) applies: Specified Risk Material Order 1997, SI 1997/2964, art 6(4). However, where a person is charged with an offence relating to the importation of a food or feeding stuff listed in Sch 1, certain defences are available to him in circumstances either where he did not know about or did not have any reason to believe that the food or feeding stuff contained specified risk material or where he was in possession of a document purporting to be a certificate which he did not know, and did not have reason to believe, was false: art 6(5).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

513 Imports

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/514. Transportation and storage.

514. Transportation and storage.

The person in control of a vehicle transporting specified risk material¹ must ensure that it is conveyed either in an impervious container which contains nothing but specified risk material, or in a part of the vehicle which is impervious and contains nothing but specified risk material, and which in either case is kept covered at all times except when necessary for loading or unloading or examination by an inspector². Any person transporting such material must ensure that the part of the vehicle in which that material has been conveyed is thoroughly washed and disinfected before any food³, feeding stuff⁴ or other animal material or any cosmetic, pharmaceutical or medical product is placed in that part of the vehicle⁵.

Unless an inspector has approved the storage of specified risk material in the same room as any food, feeding stuff or any cosmetic, pharmaceutical or medical product on being satisfied that the arrangements for storage will ensure the adequate separation of the specified risk material from such other items⁶, no person may store specified risk material in the same room as any such item⁷.

1 For the meaning of 'specified risk material' see PARA 510 ante.

2 Specified Risk Material Order 1997, SI 1997/2964, art 11(1).

3 For the meaning of 'food' see PARA 201 ante; definition applied by ibid art 2(1).

4 For the meaning of 'feeding stuff' see PARA 510 note 4 ante.

5 Specified Risk Material Order 1997, SI 1997/2964, art 11(2). 'Vehicle' means, in any case in which specified risk material is conveyed in a bulk container, that container: art 11(3).

6 Ibid art 12(2).

7 Ibid art 12(1).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/515. Powers of inspectors.

515. Powers of inspectors.

Where an inspector has reasonable grounds for supposing that the specified risk material provisions¹ are not being complied with, he may take from any carcase, material, food², feeding stuff³, or from any cosmetic, pharmaceutical or medical product, such samples as he considers necessary to establish whether or not an offence has been committed⁴.

An inspector may serve on any person in whose possession is found any feeding stuff containing specified risk material⁵, a notice requiring that person to dispose of the material, and any other material with which it has come into contact, in such manner and within such period as may be specified in the notice⁶. An inspector may serve on any person who has sold or supplied any feeding stuff containing specified risk material a notice requiring that person to collect at his own expense that product from the person to whom he supplied or sold it, or from such other person to whom it may have subsequently been supplied or sold, and to transport it to such place and within such time as may be specified in the notice⁷.

Where an inspector has reasonable grounds for suspecting that any class I specified risk material or any food or feeding stuff has been illegally imported⁸, he may at any time seize or cause to be seized that material, food or feeding stuff, or anything into which it has subsequently been incorporated⁹, and a veterinary inspector has the power to destroy any items so seized without compensation¹⁰.

Local authorities have general powers of execution and enforcement in relation to provisions concerning specified risk material¹¹.

1 le provisions of the Specified Risk Material Order 1997, SI 1997/2964: see PARAS 510-514 ante.

2 For the meaning of 'food' see PARA 201 ante; definition applied by ibid art 2(1).

3 For the meaning of 'feeding stuff' see PARA 510 note 4 ante.

4 Specified Risk Material Order 1997, SI 1997/2964, art 13.

5 Except a feeding stuff prepared for research purposes in accordance with ibid art 8(5). For the meaning of 'specified risk material' see PARA 510 ante.

6 Ibid art 14(1).

7 Ibid art 14(2). It is a defence for a person charged with an offence in respect of an alleged breach of art 14(1) or (2) to show that he took all reasonable steps necessary to comply with the notice: art 14(3). In the event of a person's failure to comply with the requirements of a notice, an inspector may, without prejudice to any proceedings arising out of such default, carry out or cause to be carried out the requirements of the notice and, unless the person concerned can establish the defence under art 14(3), the inspector may recover the costs from that person: art 14(4), (5).

8 le in breach of ibid art 6: see PARA 513 ante.

9 Ibid art 15(1).

10 Ibid art 15(2).

11 Ibid art 17.

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced:
Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881
(amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform
Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266,
SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(ii) Specified Risk Material in Feeding Stuffs and Cosmetic, Pharmaceutical and Medical Products/516. Approvals and licences.

516. Approvals and licences.

The appropriate Minister¹ may, on application, grant approvals for the use of premises for certain purposes² if he is satisfied that such premises are properly equipped to carry out the functions to which the approval relates and comply with the statutory provisions³. Such approvals or licences must be in writing, may be made subject to conditions and may be amended, suspended or revoked at any time by notice in writing served on the person to whom it was granted, if the appropriate Minister is satisfied that the statutory provisions or any conditions in the approval or licence are not being complied with⁴. In relation to the approval of premises as being suitable to process specified risk material for use in a manufacturing process which is not producing any food or feeding stuff or any cosmetic, pharmaceutical or medical product or anything intended or likely to come into direct contact with any of them, where the appropriate Minister is satisfied that, following an inspection of the premises by a veterinary inspector, certain safeguards are in place, he must grant an approval⁵. The appropriate Minister may also grant a licence authorising the consignment from Great Britain⁶ to another member state of UK specified risk material⁷, or protein or tallow derived from such material, in circumstances in which such a consignment would otherwise be prohibited⁸.

1 For these purposes, 'the appropriate Minister' means, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the National Assembly for Wales: Animal Health Act 1981 s 86(1); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, reg 2, Sch 1. As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437. As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 See for the purposes of the Specified Risk Material Order 1997, SI 1997/2964.

3 Ibid art 5(1). The reference to 'statutory provisions' is to the provisions of the Specified Risk Material Order 1997, SI 1997/2964.

4 Ibid art 5(2).

5 Ibid art 10.

6 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

7 For the meaning of 'UK specified risk material' see PARA 511 note 1 ante.

8 Specified Risk Material Order 1997, SI 1997/2964, art 16.

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

516 Approvals and licences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/517. Food for human consumption.

(iii) Specified Risk Material in Food

517. Food for human consumption.

The following practices are prohibited:

- 420 (1) the sale of specified risk material¹, or any food containing such material, for human consumption²;
- 421 (2) the use of specified risk material in the preparation of food for sale for human consumption³;
- 422 (3) the sale of specified risk material for use in the preparation of any food for sale for human consumption⁴;
- 423 (4) the use of the vertebral column⁵ of a ruminant animal⁶ in the recovery of meat by mechanical means⁷;
- 424 (5) the use, in the preparation of food for sale for human consumption, of any meat which has been recovered by mechanical means from the vertebral column of a ruminant animal⁸;
- 425 (6) the use of the vertebral column of a ruminant animal, which has died or has been slaughtered in the United Kingdom⁹ and from which meat has been cut, to produce food for sale for human consumption¹⁰.

1 For this purpose, 'specified risk material' means (1) class I and class II specified bovine material; (2) class I and class II specified sheep or goat material; and (3) specified solid waste: Specified Risk Material Regulations 1997, SI 1997/2965, reg 2(1).

For the meaning of 'class I specified bovine material' see PARA 510 note 2 ante; and for the meaning of 'class II specified bovine material' see PARA 510 note 3 ante. For the meaning of 'class I specified sheep or goat material' see PARA 510 note 2 ante; and for the meaning of 'class II specified sheep or goat material' see PARA 510 note 3 ante. For the meaning of 'specified solid waste' see PARA 510 note 3 ante.

2 Ibid reg 7(1). For the purpose of reg 7 only, 'specified risk material' includes anything derived from it: reg 7(4). However, reg 7 does not apply to a food containing specified risk material derived only from animals which were slaughtered or died outside the United Kingdom which is either (a) a food not listed in the Specified Risk Material Order 1997, SI 1997/2964, Sch 1; or (b) a food which is so listed, but it was, or any ingredients in it containing specified risk material were, imported in accordance with art 6 (see PARA 513 ante): Specified Risk Material Regulations 1997, SI 1997/2965, reg 7(5) (added by SI 1997/3062). The prohibition in head (1) in the text does not prevent the sale for human consumption of a sheep carcase containing its spinal cord (that cord being specified risk material) if (i) the carcase is intended for export whole direct to listed premises; (ii) the person selling it has in his possession the declaration required by the Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(10)(b) (see PARA 518 note 6 post); and (iii) the carcase has been marked in accordance with reg 16A (see PARA 520 text and notes 3, 4 post): reg 7(6) (added by SI 1998/2405). In the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended), the word 'whole' in the phrase 'intended for export whole' means without having been longitudinally split through the middle of its vertebral column: reg 2(2A) (added by SI 1998/2405).

3 Specified Risk Material Regulations 1997, SI 1997/2965, reg 7(2).

4 Ibid reg 7(3).

5 'Vertebral column' means the whole or any part thereof and includes the sacrum but does not include the coccygeal vertebrae: ibid reg 2(1).

6 'Ruminant animal' means a bovine animal, a sheep or a goat: ibid reg 2(1).

7 Ibid reg 8(1). As to the registration of premises on which meat is recovered by mechanical means see reg 9 (amended by SI 2000/656).

8 Ibid reg 8(2).

9 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

10 Specified Risk Material Regulations 1997, SI 1997/2965, reg 8(3).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced:
Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881
(amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform
Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266,
SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/518. Removal and initial treatment of specified risk material generally.

518. Removal and initial treatment of specified risk material generally.

When a bovine animal is slaughtered in a slaughterhouse, or slaughtered elsewhere but brought immediately to a slaughterhouse to be dressed for human consumption, all specified bovine material¹ must be removed from the carcase as soon as is reasonably practicable after the animal has been slaughtered and before the carcase is presented for inspection².

When a sheep or goat is slaughtered in the above circumstances:

- 426 (1) all specified sheep or goat material³ must be removed from the rest of the carcase at the slaughterhouse as soon as is reasonably practicable after the animal is slaughtered and before the carcase is presented for inspection⁴; or
- 427 (2) in the case of a sheep or goat with one or more permanent incisor teeth erupted, the head, spleen and tonsils must be removed at the slaughterhouse as soon as is reasonably practicable after the animal is slaughtered and before the carcase is presented for inspection, and the rest of the carcase must be consigned to an authorised⁵ slaughterhouse or cutting premises⁶.

Generally⁷, specified risk material⁸ which has been removed must be stained blue⁹ immediately after removal from the carcase and in any event before the carcase is frozen¹⁰, except that any such material which is intended to be examined by or on behalf of an inspector or a veterinary surgeon must not be stained until after the completion of the examination¹¹. Provision is made, following the removal of specified bovine material, for certain bovine animal carcasses¹², excluding the hide, to be stained yellow¹³.

Subject to the provisions concerning its storage¹⁴, specified risk material must not come into contact with any other animal material while in the slaughterhouse and must be disposed of appropriately¹⁵.

Similar, but not identical, provision is made in respect of the removal and staining of specified risk material from bovine animals, sheep and goats slaughtered elsewhere than in a slaughterhouse¹⁶.

1 For the meaning of 'specified bovine material' see PARA 517 ante.

2 Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(1). The occupier of any slaughterhouse must permit an inspector or official veterinary surgeon, or a person acting under the responsibility of either of them, (1) to inspect the carcase of any ruminant animal slaughtered there, so that he can check whether the requirements of those regulations have been complied with; and (2) to mark each carcase which has been so checked and found to comply with the requirements of the regulations, and must give to any such person such reasonable assistance as he may require: reg 10(9). No person may sell the carcase of any ruminant animal for human consumption unless it has been subjected to the controls specified in reg 10(9) or, in the case of the carcase of any sheep or goat consigned to an authorised slaughterhouse or to authorised cutting premises, reg 15(4) (see PARA 519 text and notes 9-11 post), and found to comply with the requirements of the regulations: reg 10(11) (added by SI 1999/539). As to the charges levied on the occupiers and owners of slaughterhouses in respect of inspections carried out under the Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(9) see the Specified Risk Material (Inspection Charges) Regulations 1999, SI 1999/539 (amended by SI 2000/656). Where the Minister has had judgment entered against the occupier or owner of a slaughterhouse in respect of any such charge remaining unpaid, he may refuse to carry out further inspections under the Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(9) until such time as judgment is satisfied: reg 31A(1) (added by SI 1999/539).

- 3 For the meaning of 'specified sheep or goat material' see PARA 510 ante.
- 4 Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(2)(a).
- 5 I.e. authorised pursuant to ibid reg 15(7) (amended by SI 2000/656).
- 6 Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(2)(b). For the meaning of 'cutting premises' see PARA 503 note 2 ante; definition applied by reg 2(1). This does not require the removal of a spinal cord (which is specified risk material) from the carcass of a sheep which has been slaughtered in a slaughterhouse if: (1) the carcass is intended for export whole direct to listed premises; (2) the occupier of the slaughterhouse provides a written declaration to an official veterinary surgeon (a) indicating that he believes that the carcass is intended for such export, and (b) specifying the date, place and time of loading into the sealed vehicle by which it is intended to be moved for the purpose of such export; and (3) the carcass has been marked in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965, reg 16A (as added and amended) (see PARA 520 text and notes 3-4 post): reg 10(10) (added by SI 1998/2405). 'Listed premises' means those premises notified to the Food Standards Agency by his French equivalent: see the Specified Risk Material Regulations 1997, SI 1997/2965, reg 2(1) (definition added by SI 1998/2405; and amended by SI 2000/656). For the meaning of 'whole' see PARA 517 note 2 ante. As to the establishment of the Food Standards Agency see PARA 225 ante.
- 7 I.e. subject to the Specified Risk Material Regulations 1997, SI 1997/2965, reg 15 (as amended) concerning the prohibition on the removal of the spinal cord of a ruminant animal: see PARA 519 post.
- 8 For the meaning of 'specified risk material' see PARA 510 ante.
- 9 'Stained blue' is defined in the Specified Risk Material Regulations 1997, SI 1997/2965, reg 5(1).
- 10 Ibid reg 10(3). Material which is not specified bovine material may be separated from intestines which have been removed from the carcass before the intestines are stained: reg 10(4). For the meaning of 'intestines' see PARA 510 note 3 ante.
- 11 Ibid regs 5(3)(d), 10(6).
- 12 I.e. the carcasses of 'scheme animals' (as defined in ibid reg 2(1)).
- 13 Ibid reg 10(7). 'Stained yellow' is defined in reg 5(2). Any staining, blue or yellow, must remain visible until the specified risk material is incinerated or rendered: reg 13.
- 14 I.e. contained in ibid reg 28: see PARA 521 post.
- 15 Ibid reg 10(4). As to the disposal of specified risk material see PARA 521 post.
- 16 Ibid reg 11. The staining requirements in regs 10, 11 do not apply to certain categories of specified risk material including that which (1) is to be sent to a veterinary or medical school, laboratory, hospital or similar institution for instructional, diagnostic or research purposes; (2) is intended to be used at premises approved under the Specified Risk Material Order 1997, SI 1997/2964, art 10 (see PARA 516 ante); or (3) is specified solid waste: Specified Risk Material Regulations 1997, SI 1997/2965, reg 5(3).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced:
 Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881
 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform
 Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266,
 SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/519. Prohibitions on removal of certain specified risk materials.

519. Prohibitions on removal of certain specified risk materials.

No person may remove the brain or eyes from the carcase of a bovine animal aged over six months, or from a carcase of a sheep or goat of any age at death, except for the purposes of veterinary or scientific examination or research, and in a part of the premises kept free at all times from food intended for human consumption¹.

No person may remove the spinal cord or any part of it from the vertebral column² of a sheep or goat in which there was at least one permanent incisor tooth erupted or which was aged over 12 months at the date of slaughter, except:

- 428 (1) in an authorised slaughterhouse or at authorised cutting premises³ by longitudinally splitting the whole vertebral column or by removing a longitudinal section of the whole vertebral column containing the spinal cord⁴; or
- 429 (2) in premises intended for the purposes of veterinary or scientific examination⁵.

No person may remove the spinal cord or any part of it from the vertebral column of a bovine animal aged six months or more, or longitudinally split the vertebral column of such an animal, except in a slaughterhouse or in premises intended for the purposes of veterinary or scientific examination⁶.

Where a carcase or bone-in carcase meat is consigned to a slaughterhouse or cutting premises⁷ the spinal cord must be removed⁸.

The occupier of a slaughterhouse or cutting premises must permit an inspector or official veterinary surgeon, or a person acting under the responsibility of either of them, to inspect the carcase of any sheep or goat consigned there so that he can check whether the specified risk material⁹ has been removed from the carcase¹⁰ and the occupier must give to any such person such reasonable assistance as he may require¹¹. If the spinal cord is removed in a slaughterhouse or at cutting premises, the occupier must ensure that it is stained blue¹², and disposed of in accordance with the regulations¹³. If the spinal cord is removed at any premises other than a slaughterhouse or cutting premises for the purposes of veterinary or scientific examination, after that examination both the spinal cord and the vertebral column must be stained blue and disposed of in accordance with the regulations¹⁴.

1 Specified Risk Material Regulations 1997, SI 1997/2965, reg 14.

2 For the meaning of 'vertebral column' see PARA 517 note 5 ante.

3 For the meaning of 'cutting premises' see PARA 503 note 2 ante; definition applied by the Specified Risk Material Regulations 1997, SI 1997/2965, reg 2(1). The Food Standards Agency has the power to authorise, for the purposes of reg 15 (as amended), any slaughterhouse or cutting premises licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (Specified Risk Material Regulations 1997, SI 1997/2965, regs 2(1), 15(7), (8) (regs 15(7), (8) amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

4 Specified Risk Material Regulations 1997, SI 1997/2965, reg 15(1)(a).

5 Ibid reg 15(1)(b). Reference to 'premises intended for the purposes of veterinary and scientific examination' is to premises referred to in reg 5(3)(a): see PARA 518 note 16 ante.

6 Ibid reg 15(2). See note 5 supra.

7 Ie in accordance with ibid reg 10(2): see PARA 518 ante.

8 Ibid reg 15(3).

9 For the meaning of 'specified risk material' see PARA 510 ante.

10 Ie in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended). 'Stained blue' is defined in reg 5(1).

11 Ibid reg 15(4). As to the charges levied on the occupiers and owners of slaughterhouses and cutting premises in respect of inspections carried out under reg 15(4) see the Specified Risk Material (Inspection Charges) Regulations 1999, SI 1999/539 (amended by SI 2000/656). Where the Minister has had judgment entered against the occupier or owner of a slaughterhouse or cutting premises in respect of any such charge remaining unpaid, he may suspend the authorisation of the slaughterhouse or cutting premises concerned until such time as judgment is satisfied: Specified Risk Material Regulations 1997, SI 1997/2965, reg 31A(1) (added by SI 1999/539).

12 Ie in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965, reg 10(3).

13 Ibid reg 15(5).

14 Ibid reg 15(6).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced:
Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/520. Particular requirements relating to sheep and goats.

520. Particular requirements relating to sheep and goats.

Where a sheep or goat is slaughtered in a slaughterhouse, and at the time of slaughter there were no permanent incisor teeth erupted or it was aged not more than 12 months, an official veterinary surgeon, or an authorised officer, an inspector or meat technician¹ acting under his responsibility, must mark the carcase of the animal with the young lamb stamp².

In the case of any sheep carcase intended for export whole direct to listed premises³, the occupier of the slaughterhouse at which the sheep concerned was slaughtered must ensure that its carcase is marked in accordance with the regulations⁴.

No person may move from a slaughterhouse a carcase of a sheep or goat suitable for human consumption that is not marked with a young lamb stamp, except:

- 430 (1) to authorised cutting premises⁵ that are co-located with the slaughterhouse⁶;
- 431 (2) a carcase which has been inspected and health marked⁷ and which is moved in a sealed vehicle⁸;
- 432 (3) when all specified risk material⁹ has been removed from the carcase¹⁰; or
- 433 (4) in the case of a sheep carcase, one which (a) contains its spinal cord (which is specified risk material); (b) is intended for export whole direct to listed premises; and (c) is moved in a sealed vehicle¹¹.

No person must so transport a carcase¹² unless the carcase is accompanied by a document indicating: (i) (in all cases) the name, address and licence number of the slaughterhouse from which the carcase is being transported¹³; (ii) (in the case where the carcase is being transported to authorised cutting premises) the name, address and licence number of those premises¹⁴; and (iii) (in the case of the transportation referred to in head (4) above) the name and address of the listed premises to which it is intended the carcase will be exported¹⁵.

Where any carcase of a sheep or goat that is not marked with a young lamb stamp is being transported from a slaughterhouse to authorised cutting premises or to listed premises, an official veterinary surgeon, or an authorised officer, an inspector or meat technician¹⁶ acting under his responsibility, must be present at, and must supervise, the loading and unloading of the carcase¹⁷. During such transportation, the delivery vehicle must be sealed¹⁸.

No person may have in his possession elsewhere than in a slaughterhouse, in a sealed vehicle or at authorised cutting premises a carcase of a sheep or goat intended for sale for human consumption containing spinal cord, unless it is stamped with a young lamb stamp¹⁹.

The occupier of each slaughterhouse from which any sheep carcase containing its spinal cord (which is specified risk material) has been moved in a sealed vehicle for the purpose of exporting it whole direct to listed premises must, as soon as is practicable after the end of the third complete working day²⁰ following the day of its departure from the slaughterhouse concerned, give written notice to the person who supervised its loading into that vehicle²¹ as to whether or not he has received confirmation of the carcase's arrival at the listed premises concerned²².

1 As to the appointment of meat technicians for this purpose see the Specified Risk Material Regulations, SI 1997/2965, reg 16(4) (amended by SI 2000/656).

2 Specified Risk Material Regulations, SI 1997/2965, reg 16(1), (2). As to the form that the young lamb stamp must take see reg 16(2). No person may use any stamp so resembling the young lamb stamp, or in such a way, as to be likely to suggest that any carcase other than a carcase of a sheep or goat in which there were no permanent incisors erupted is such a carcase: reg 16(3).

3 I.e. a carcase to which *ibid* reg 10(10) applies: see PARA 518 note 6 ante.

4 *Ibid* reg 16A(1) (added by SI 1998/2405). As to the specifications relating to the mark (known as 'the export mark') and the persons authorised to apply it see further the Specified Risk Material Regulations 1997, SI 1997/2965, reg 16A(2), (4) (as so added; and reg 16A(4) amended by SI 2000/656). No person may (1) apply the export mark to a sheep carcase unless it contains its spinal cord (which is specified risk material) and it is intended for export whole direct to listed premises; or (2) do any other thing which is likely to lead any person wrongly to believe that a sheep carcase (a) still contains its spinal cord (which is specified risk material), and (b) is intended for export whole direct to listed premises: Specified Risk Material Regulations, SI 1997/2965, reg 16A(3) (as so added).

5 For the meaning of 'cutting premises' see PARA 503 note 2 ante; definition applied by *ibid* reg 2(1).

6 Specified Risk Material Regulations 1997, SI 1997/2965, reg 17(1)(a).

7 I.e. in accordance with the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539: see PARA 504 ante.

8 Specified Risk Material Regulations 1997, SI 1997/2965, reg 17(1)(b) (amended by SI 1998/2405).

9 For the meaning of 'specified risk material' see PARA 510 ante.

10 Specified Risk Material Regulations 1997, SI 1997/2965, reg 17(1)(c).

11 *Ibid* reg 17(1)(d) (added by SI 1998/2405). For the meaning of 'whole' see PARA 517 note 2 ante.

12 I.e. in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965, reg 17(1) (as amended: see note 8 supra).

13 *Ibid* reg 17(2)(a) (reg 17(2) substituted by SI 1998/2405).

14 *Ibid* reg 17(2)(b) (as substituted: see note 13 supra).

15 *Ibid* reg 17(2)(c) (as substituted: see note 13 supra).

16 As to the appointment of meat technicians for this purpose see *ibid* reg 18(5) (amended by SI 2000/656).

17 Specified Risk Material Regulations 1997, SI 1997/2965, reg 18(1), (2) (amended by SI 1998/2405).

18 Specified Risk Material Regulations 1997, SI 1997/2965, reg 18(3), (4).

19 *Ibid* reg 19(1). This provision does not apply to a carcase of a sheep or goat slaughtered before 1 January 1998: reg 19(2) (added by SI 1997/3062). No person may transport a sheep carcase (1) intended for export whole direct to listed premises; and (2) containing its spinal cord (which is specified risk material), unless (a) he has in his possession, in addition to the document required by the Specified Risk Material Regulations 1997, SI 1997/2965, reg 17(2), a copy of the declaration required by reg 10(10)(b); and (b) the carcase has been marked in accordance with reg 16A (as added): reg 19(3) (added by SI 1998/2405). Where an authorised officer of the enforcement authority certifies that any sheep carcase has been possessed in contravention of the Specified Risk Material Regulations 1997, SI 1997/2965, reg 19(1) or transported in contravention of reg 19(3), that carcase must be treated for the purposes of the Food Safety Act 1990 s 9 (see PARA 284 ante) as failing to comply with food safety requirements: Specified Risk Material Regulations 1997, SI 1997/2965, reg 19(4) (added by SI 1998/2405).

20 'Working day' means a day which is a working day in the part of Great Britain where the slaughterhouse from which the sheep carcase concerned has been moved is situated; and for that purpose a working day is a day which is not (1) a Saturday or a Sunday; (2) a common law holiday there; or (3) a bank holiday there: Specified Risk Material Regulations 1997, SI 1997/2965, reg 19A(2) (added by SI 1998/2405). For the meaning of 'Great Britain' see PARA 206 note 1 ante. See further TIME.

21 I.e. in accordance with the Specified Risk Material Regulations 1997, SI 1997/2965, reg 18(1).

22 *Ibid* reg 19A(1) (added by SI 1998/2405).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

520 Particular requirements relating to sheep and goats

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/521. Transportation, storage and disposal of specified risk material.

521. Transportation, storage and disposal of specified risk material.

After specified risk material¹ has been removed from the carcase and treated², the person responsible for its removal or recovery must, without unreasonable delay, send it directly to:

- 434 (1) an approved collection centre³;
- 435 (2) an approved rendering plant⁴;
- 436 (3) a veterinary or medical school, laboratory, hospital or similar institution for instructional, diagnostic or research purposes⁵;
- 437 (4) an approved incinerator⁶; or
- 438 (5) approved premises not producing food, feeding stuffs or cosmetic, pharmaceutical or medical products⁷.

If the Food Standards Agency is satisfied that specified risk material cannot be disposed of under the regulations⁸, whether for reasons of mechanical breakdown of equipment or otherwise, the Agency may give written directions to the owner or person in control of the specified risk material for its disposal in a safe manner⁹.

Subject to one exception¹⁰, the person in control of a vehicle¹¹ transporting specified risk material must ensure that it is conveyed either in an impervious container which contains nothing but specified risk material or in a part of the vehicle which is impervious and contains nothing but specified risk material and which in either case is kept covered at all times except when necessary for loading or unloading or examination by an authorised officer of an enforcement authority¹². Any person transporting specified risk material must ensure that the part of the vehicle in which such material has been conveyed is thoroughly washed and disinfected before any food is subsequently placed in that part of the vehicle¹³.

Except where an official veterinary surgeon, inspector or an authorised officer of an enforcement authority has approved the storage of specified risk material in the same room as any food on being satisfied that the arrangements for storage will ensure the adequate separation of the specified risk material from the food¹⁴, no person may store specified risk material in the same room as any food¹⁵. Furthermore, no person may store specified risk material otherwise than in an impervious container which (a) contains nothing but specified risk material; (b) is labelled as containing such material; (c) is not left uncovered when containing such material; and (d) after use for such storage is thoroughly washed and disinfected before being used for any purpose in relation to the storage of food¹⁶.

1 For the meaning of 'specified risk material' see PARA 510 ante.

2 In accordance with the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended).

3 Ibid reg 21(1)(a). As to approved collection centres see reg 22.

4 Ibid reg 21(1)(b). As to approved rendering plants see reg 24, Sch 1.

5 Ibid reg 21(1)(c). The premises are those referred to in reg 5(3)(a). As to such premises see reg 25.

6 Ibid reg 21(1)(d). As to approved incinerators see reg 23.

7 Ibid reg 21(1)(e). The reference to approved premises is to those approved under the Specified Risk Material Order 1997, SI 1997/2964, art 10: see PARA 516 ante.

8 Ibid under the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended).

9 Ibid reg 26(1) (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante. In the event of non-compliance with such directions arrangements may be made for the disposal of the specified risk material at the expense of the owner: see the Specified Risk Material Regulations, SI 1997/2965, reg 26(2).

10 Ibid transportation of the carcase of a sheep or goat in accordance with ibid reg 17 (see PARA 520 ante): reg 27(4).

11 For the purpose of ibid reg 27, 'vehicle' means, in any case in which specified risk material is conveyed in a bulk container, that container: reg 27(3).

12 Ibid reg 27(1).

13 Ibid reg 27(2).

14 Ibid reg 28(2).

15 Ibid reg 28(1).

16 Ibid reg 28(3).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced:
Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881
(amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform
Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266,
SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/522. Approvals, authorisations and registrations.

522. Approvals, authorisations and registrations.

The Food Standards Agency¹ may, on application, authorise or register any premises for the specified purposes² if it is satisfied that the premises are properly equipped to carry out the functions to which the authorisation or registration relates, and to comply with the requirement of the Part of the Specified Risk Material Regulations 1997³ to which the authorisation or registration relates⁴. Any approval, authorisation or registration so granted or made must be in writing and may be made subject to conditions⁵. Any such approval, authorisation or registration may be amended, suspended or revoked at any time by notice in writing served on the person to whom the approval, authorisation or registration was granted or, if that person is no longer the occupier of the premises to which the approval, authorisation or registration relates, on the occupier of those premises, if the Minister or, as the case may be, the Agency is satisfied that any provisions of the regulations in relation to the premises, or any conditions in the approval, authorisation or registration, are not being complied with⁶.

Specific provision is also made in relation to the registration of premises on which meat may be recovered by mechanical means from ruminant animals⁷.

1 As to the establishment of the Food Standards Agency see PARA 225 ante.

2 Ie for the purposes of the Specified Risk Material Regulations 1997, SI 1997/2965, Pt II (restrictions on the use of specified risk material and vertebral column of ruminant animals), Pt IV (prohibitions on the removal of certain specified risk materials from ruminant animals), Pt V (particular requirements in relation to sheep and goats).

3 Ie the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended).

4 Ibid reg 6(1) (substituted by SI 2000/656).

5 Specified Risk Material Regulations 1997, SI 1997/2965, reg 6(2).

6 Ibid reg 6(3) (amended by SI 2000/656). Any approval granted or having effect as if granted under the Specified Bovine Material Order 1997, SI 1997/617 (revoked) will continue to operate as if granted under the equivalent provision of the Specified Risk Material Regulations 1997, SI 1997/2965, reg 32.

7 See ibid reg 9 (amended by SI 2000/656).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iii) Specified Risk Material in Food/523. Enforcement.

523. Enforcement.

An occupier of food premises must take all practicable steps to secure compliance by any of his employees with the provisions of the specified material risk regulations¹ which apply to those premises². Any person who contravenes this provision, or any other provision of the specified risk material regulations or any direction given as to disposal of material³, is guilty of an offence⁴.

If any person makes a declaration in relation to the carcass of a sheep intended for export whole direct to listed premises⁵ knowing it to be, or being reckless as to whether it is, false or misleading in a material particular, he is guilty of an offence⁶.

No prosecution for any of the above offences may be begun after the expiry of either three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier⁷.

The specified material risk regulations must be enforced: (1) by the Food Standards Agency in relation to licensed premises in England⁸; (2) by the Agency in relation to licensed premises in Wales⁹; and (3) in relation to any other premises, by the food authority in whose area the premises are situated¹⁰. On an inspection of any food intended for human consumption an authorised officer of a food authority or an official veterinary surgeon may certify that the food fails to comply with these regulations¹¹.

1 Ie the Specified Risk Material Regulations 1997, SI 1997/2965 (as amended).

2 Ibid reg 29(1).

3 Ie under ibid reg 26 (as amended): see PARA 521 ante.

4 Ibid reg 29(2). Any person guilty of such an offence is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine or imprisonment not exceeding two years or to both: reg 29(2). As to the statutory maximum see PARA 261 note 22 ante.

5 Ie a declaration under ibid reg 10(10)(b): see PARA 518 note 6 ante.

6 Ibid reg 29(2A) (added by SI 1998/2405). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Specified Risk Material Regulations 1997, SI 1997/2965, reg 29(2A) (as so added). As to the standard scale see PARA 242 note 18 ante.

7 Specified Risk Material Regulations 1997, SI 1997/2965, reg 29(3) (amended by SI 1998/2405). The presumptions and defences under the Food Safety Act 1990 s 2 (as amended) (extended meaning of sale) (see PARA 262 ante), s 3 (presumption that food is intended for human consumption) (see PARA 282 ante), s 9 ((inspection and seizure of suspected food) subject to the modification that it applies to an authorised officer of an enforcement authority as it applies to an authorised officer of a food authority) (see PARA 284 ante), s 20 (offence due to fault of another person) (see PARA 461 ante), s 21 (defence of due diligence) (see PARA 465 ante), s 30(8) (which relates to documentary evidence) (see PARA 269 ante), s 33 (obstruction etc of officers) (see PARA 271 ante), s 36 (offences by bodies corporate) (see PARA 460 ante), s 44 (protection of officers acting in good faith) (see PARA 272 ante) apply: Specified Risk Material Regulations 1997, SI 1997/2965, reg 30.

8 Ibid reg 31(1)(a) (amended by SI 2000/656). Premises are licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended): see PARAS 478, 503 et seq ante. As to the establishment of the Food Standards Agency see PARA 225 ante.

9 Specified Risk Material Regulations 1997, SI 1997/2965, reg 31(1)(b) (amended by SI 2000/656). As to the National Assembly for Wales see the Government of Wales Act 1998 s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10 Specified Risk Material Regulations 1997, SI 1997/2965, reg 31(1)(c). As to food authorities see PARA 251 et seq ante.

11 Ibid reg 31(2). Where any food is certified as mentioned in reg 31(2) it may be treated for the purposes of the Food Safety Act 1990 s 9 (see PARA 284 ante) as failing to comply with food safety requirements: Specified Risk Material Regulations 1997, SI 1997/2965, reg 31(3).

UPDATE

510-523 Feeding stuffs ... Enforcement

SI 1997/2964, SI 1997/2965, SI 1999/539, SI 2001/447, SI 2001/1303 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295); Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

523-525 Enforcement ... Prohibited practices

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

523 Enforcement

NOTE 9--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(iv) Selective Cull/524. Staining and destruction of material.

(iv) Selective Cull

524. Staining and destruction of material.

Provision is made in connection with the selective cull¹ requiring licensed operators² of slaughterhouses to ensure that:

- 439 (1) heads, internal organs and carcasses are permanently stained;
- 440 (2) stained material is transported in sealed containers to specially authorised incinerators or rendering plants;
- 441 (3) no bovine animal intended for human consumption is present in a slaughterhouse when animals are being slaughtered under the selective cull;
- 442 (4) where animals to be slaughtered under the selective cull need to be lairaged prior to slaughter, they are kept separate from bovine animals intended for human consumption;
- 443 (5) where it is necessary to store products derived from animals slaughtered under the selective cull, such products are stored separately from any storage facility used for meat or other products intended for human or animal consumption³.

There is a prohibition on any part of an animal slaughtered under the selective cull entering the human or animal food chains or being used for cosmetic or pharmaceutical products⁴. In the case of approved operators⁵ of incinerators or plants it is required that: (a) stained material is processed and destroyed; (b) where it is necessary to store products derived from animals slaughtered under the selective cull, such products must be stored separately from any storage used for meat or other products intended for human or animal consumption⁶. There is also a prohibition on any part of an animal slaughtered under the selective cull entering the human or animal food chains or being used for cosmetic or pharmaceutical products⁷.

1 'Selective cull' means the compulsory slaughter programme introduced under the Animal Health Act 1981 s 32 (see ANIMALS vol 2 (2008) PARA 1089) in accordance with the plan for the control and eradication of bovine spongiform encephalopathy drawn up by the United Kingdom and approved by EC Commission Decision 96/385 (OJ L151, 26.6.96, p 39) (as amended): Selective Cull (Enforcement of Community Compensation Conditions) Regulations 1996, SI 1996/3186, reg 2. For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

2 'Licensed operator' means the owner or occupier of a slaughterhouse licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (see PARA 478 ante): Selective Cull (Enforcement of Community Compensation Conditions) Regulations 1996, SI 1996/3186, reg 2.

3 Ibid reg 3(1), Schedule Pt I. The regulations make provision for the enforcement of EC Commission Regulation 1484/96 (OJ L188, 27.7.96, p 25) adopting exceptional support measures for the beef market in the United Kingdom by application of EC Council Decision 96/385 (OJ L151, 26.6.96, p 39), and if a licensed operator of a slaughterhouse breaches the provisions referred to in the Selective Cull (Enforcement of Community Compensation Conditions) Regulations 1996, SI 1996/3186, Schedule, he is guilty of an offence: reg 3(1). Any person guilty of an offence under reg 3 is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4. As to the commission of offences by bodies corporate see reg 5. As to the standard scale see PARA 242 note 18 ante.

4 Ibid reg 3(1), Schedule Pt I.

5 Ie approved under the Specified Bovine Material (No 3) Order 1996, SI 1996/1941 (revoked): Selective Cull (Enforcement of Community Compensation Conditions) Regulations 1996, SI 1996/3186, reg 2.

6 Ibid reg 3(2), Schedule Pt II. Any approved operator breaching the provisions specified in the Schedule is guilty of an offence: reg 3(2). As to the penalties see note 3 supra.

7 Ibid reg 3(2), Schedule Pt II.

UPDATE

523-525 Enforcement ... Prohibited practices

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/ (v) Beef Bones and Bone-in Beef/525. Prohibited practices.

(v) Beef Bones and Bone-in Beef

525. Prohibited practices.

The following provisions do not apply to the production of food for sale direct to the ultimate consumer at the premises where production takes place, including the case where the sale involves delivery of take-away food¹. Apart from this exemption, no person may:

- 444 (1) use any bone-in beef² in the preparation in the course of a business of any food for human consumption³;
- 445 (2) sell any bone⁴ removed from bone-in beef deboned⁵ in Great Britain⁶ for use in the preparation in the course of a business of any food or ingredient⁷ for human consumption⁸;
- 446 (3) use any bone removed from bone-in beef deboned in Great Britain in the preparation in the course of a business of any food or ingredient for human consumption⁹;
- 447 (4) in the course of a business sell for human consumption any food an ingredient of which consists of bones removed from bone-in beef deboned in Great Britain¹⁰;
- 448 (5) in the course of a business sell for human consumption any food an ingredient of which is derived from bones removed from bone-in beef deboned in Great Britain¹¹;
- 449 (6) sell any substance derived from bones removed from bone-in beef deboned in Great Britain for use in the preparation in the course of a business of any food or ingredient for human consumption¹²;
- 450 (7) use any substance derived from bones removed from bone-in beef deboned in Great Britain in the preparation in the course of a business of any food or ingredient for human consumption¹³.

At food premises, bones removed from bone-in beef deboned in Great Britain, and all substances derived from such bones, must be stored separately from, and must not come into contact with, any other food¹⁴. Each person who at food premises debones bone-in beef must make a record of the place to which the bones concerned are consigned, and where those bones are re-consigned the person re-consigning them must make a record of the place to which they are consigned¹⁵.

An occupier of food premises must take all practicable steps to secure compliance by each of his employees with these provisions¹⁶. Any person who contravenes any of the above provisions is guilty of an offence¹⁷.

The beef bones regulations must be enforced: (a) by the Food Standards Agency in relation to licensed premises in England and Wales¹⁸; and (b) in relation to any other premises, by the food authority in whose area the premises are situated¹⁹. On an inspection of any food or ingredient intended for human consumption an authorised officer of a food authority or an official veterinary surgeon may certify that the food fails to comply with these regulations²⁰.

¹ See the Beef Bones Regulations 1997, SI 1997/2959, regs 3(2), 4(4), 5(5)-(7), 7(2) (all as substituted); and notes 3, 8-11, 13-15 infra.

2 'Bone-in beef' means a carcass or any fresh meat which contains or to which there is attached any bone: Beef Bones Regulations 1997, SI 1997/2959, reg 2(1).

3 Ibid reg 3(1) (reg 3 substituted in relation to England by SI 1999/3371, and in relation to Wales by SI 1999/3464). This prohibition does not apply to the use of bone-in beef in the production of food for sale direct to the ultimate consumer at the premises where the production takes place, including the case where the sale involves delivery of take-away food: Beef Bones Regulations 1997, SI 1997/2959, reg 3(2) (as so substituted). 'Ultimate consumer' means any person who buys otherwise than for the purposes of a food business: reg 2(1). Nothing in reg 3(1) (as substituted) prohibits the processing or treatment of bone-in beef for sale as such: reg 3(3) (as so substituted).

4 'Bone' means any bone (including bone marrow and any part of a bone) of a bovine animal, including the bones of the tail and feet, but excluding cartilage: ibid reg 2(1).

5 'Deboning' means removing any bone from any bone-in beef: ibid reg 2(1).

6 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

7 'Ingredient' means any substance, including any additive, which is used in the preparation of a food and which is still present in the finished product, even if in altered form: Beef Bones Regulations 1997, SI 1997/2959, reg 2(1).

8 Ibid reg 4(1) (reg 4 substituted in relation to England by SI 1999/3371 and in relation to Wales by SI 1999/3464). This prohibition does not apply to the sale of bones for use in the production of food for sale direct to the ultimate consumer at the premises where the production takes place, including the case where the sale to the ultimate consumer involves delivery of take-away food: Beef Bones Regulations 1997, SI 1997/2959, reg 4(3) (as so substituted).

9 Ibid reg 4(2) (as substituted: see note 8 supra). This prohibition does not apply to the use of bones in the production of food for sale direct to the ultimate consumer at the premises where the production takes place, including the case where the sale involves delivery of take-away food: reg 4(4) (as so substituted).

10 Ibid reg 5(1) (reg 5 substituted in relation to England by SI 1999/3371, and in relation to Wales by SI 1999/3464). This prohibition does not apply to the sale of any food, an ingredient of which consists of bones, direct to the ultimate consumer at the premises where it was produced (including the case where the sale involves delivery of take-away food) if the bones in question were added to the food at those premises: Beef Bones Regulations 1997, SI 1997/2959, reg 5(5) (as so substituted).

11 Ibid reg 5(2) (as substituted: see note 10 supra). This prohibition does not apply to the sale of food direct to the ultimate consumer at the premises where it was produced (including the case where the sale involves delivery of take-away food) if the ingredient in question was derived from the bones concerned at those premises: reg 5(6) (as so substituted). For the purposes of reg 5 (as substituted), an ingredient or substance is treated as derived from bones removed from bone-in beef regardless of whether it was derived from the bones before, during or after their removal from the bone-in beef: reg 5(8) (as so substituted).

12 Ibid reg 5(3) (as substituted: see note 10 supra).

13 Ibid reg 5(4) (as substituted: see note 10 supra). This prohibition does not apply to the use of a substance in the production of food for sale direct to the ultimate consumer at the premises where the production takes place (including the case where the sale involves delivery of take-away food) if that substance was derived from the bones concerned at those premises: reg 5(7) (as so substituted).

14 Ibid reg 7(1) (reg 7 substituted in relation to England by SI 1999/3371, and in relation to Wales by SI 1999/3464). This prohibition does not apply to the storage of bones and substances at any premises at which (pursuant to the Beef Bones Regulations 1997, SI 1997/2959) the bones and substances are used in the production of food for sale direct to the ultimate consumer at those premises: reg 7(2) (as so substituted).

15 Ibid reg 9(1), (2) (reg 9 substituted in relation to England by SI 1999/3371, and in relation to Wales by SI 1999/3464). Such records must be kept for at least two years from the date of making: Beef Bones Regulations 1997, SI 1997/2959, reg 9(3) (as so substituted). The requirement to keep records does not apply where bones are disposed of by way of sale to the ultimate consumer, or not consigned or re-consigned for human consumption: reg 9(4) (as so substituted).

16 Ibid reg 10(1).

17 Ibid reg 10(2). Any person guilty of such an offence is liable (1) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for up to six months, or both; or (2) on conviction on indictment, to a fine or imprisonment for up to two years, or both: reg 10(2). As to the statutory maximum see

PARA 261 note 22 ante. Proceedings for an offence may be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge (reg 10(3)), but no such proceedings may be begun more than three years after the commission of the offence (reg 10(4)).

18 Ibid reg 12(1)(a), (b) (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante. Premises are licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995, SI 1995/539 (as amended): see PARAS 478, 503 et seq ante.

19 Beef Bones Regulations 1997, SI 1997/2959, reg 12(1)(c). As to food authorities see PARA 251 et seq ante.

20 Ibid reg 12(2). Where any food is certified as mentioned in reg 12(2) it may be treated for the purposes of the Food Safety Act 1990 s 9 (see PARA 284 ante) as failing to comply with food safety requirements: Beef Bones Regulations 1997, SI 1997/2959, reg 12(3).

UPDATE

523-525 Enforcement ... Prohibited practices

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

525 Prohibited practices

TEXT AND NOTES 18-20--Now, SI 1997/2959 must be enforced by the Food Standards Agency in relation to any cutting plant, game-handling establishment or slaughterhouse, and, in relation to any other premises, by the Food Standards Agency or by the food authority within whose area the premises are situated: reg 12(1) (substituted, in relation to England, by SI 2006/14 and, in relation to Wales, by SI 2006/31). 'Cutting plant', 'game-handling establishment' and 'slaughterhouse' have the meanings that they bear by virtue of the Food Hygiene (England) Regulations 2006, SI 2006/14, reg 5(6) and the Food Hygiene (Wales) Regulations 2006, SI 2006/31, reg 5(6) (see PARA 293A.2): SI 1997/2959 reg 2(1) (definitions added by SI 2006/14 (England), SI 2006/31 (Wales)).

For 'official veterinary surgeon' read 'official veterinarian': SI 1997/2959 reg 12(2) (amended by SI 2006/14 (England), SI 2006/31 (Wales)). 'Official veterinarian' means a veterinarian who is qualified in accordance with EC Parliament and Council Regulation 854/2004 to act in such a capacity and is appointed by the Food Standards Agency: SI 1997/2959 reg 2(1) (definition added by SI 2006/14 (England), SI 2006/31 (Wales)).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(vi) Trade in Bovine Animals, Embryos, Meat and other Products/526. Trade prohibitions.

(vi) Trade in Bovine Animals, Embryos, Meat and other Products

526. Trade prohibitions.

No person may despatch¹ from Great Britain² to a member state or a third country, bring to any place in Great Britain for the purpose of such despatch, or consign for the purpose of such despatch, any³:

- 451 (1) live bovine animal⁴ or bovine embryo, meat meal, bonemeal or meat and bonemeal derived from any mammal, or animal feed or fertiliser containing any meat meal, bonemeal or meat and bonemeal derived from any mammal, unless certain conditions are met⁵;
- 452 (2) meat derived from a bovine animal slaughtered in the United Kingdom, product derived from a bovine animal slaughtered in the United Kingdom which is liable to enter the human food or animal feed chain, or material derived from a bovine animal slaughtered in the United Kingdom which is destined for use in cosmetics or medical or pharmaceutical products, unless certain conditions are met⁶; and
- 453 (3) foreign origin export eligible goods⁷ or foreign origin bovine by-product⁸, unless certain conditions are met⁹.

1 'Despatch' includes carry: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

2 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

3 Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 5(1).

4 'Bovine animal' includes buffalo of the species *Bubalus bubalis* and *Bison bison*: *ibid* reg 2(1).

5 *Ibid* reg 3(1). The despatch, bringing or consignment of any food destined for domestic carnivores by reason only that such food contains meat meal, bonemeal or meat and bonemeal derived from any mammal, is not prohibited, provided that those materials do not originate from the United Kingdom and each stage in the preparation of the food which took place in the United Kingdom took place at an approved establishment in accordance with the requirements of that approval: reg 3(2). For the requirements relating to approved establishments and their operators see regs 12, 13, Schs 2, 3 (reg 13 amended by SI 1999/1554). For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

6 Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 4(1). This prohibition does not apply in relation to: (1) any controlled bovine by-product produced in a registered establishment; and (2) Date Based Export Scheme (DBES) goods derived from DBES animals slaughtered in an approved slaughterhouse in Great Britain, if certain conditions are met: reg 4(3), (4). For the requirements relating to registered establishments and their operators see regs 7, 8. For the requirements relating to approved slaughterhouses and their operators see regs 10, 11, Schs 1, 2.

'Controlled bovine by-product' means any of the following products, produced in the United Kingdom from any part of a bovine animal slaughtered in the United Kingdom which is liable to enter the human food or animal feed chain or is destined for use in cosmetics, medical or pharmaceutical products: (a) an amino acid; (b) a peptide; (c) tallow; (d) a tallow product not within head (e) *infra*; or (e) a product, derived by saponification, transesterification or hydrolysis from tallow: reg 2(1).

'Date Based Export Scheme (DBES) goods' means any fresh meat, minced meat, meat preparation, meat product or food for domestic carnivores derived from DBES eligible animals, that is, bovine animals which satisfy the conditions set out in EC Council Decision 98/256 (OJ L113, 15.4.98, p 33) concerning emergency

measures to protect against bovine spongiform encephalopathy (as amended): Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

7 'Foreign origin export eligible goods' means any of the following goods derived from a bovine animal which was not slaughtered in the United Kingdom: (1) fresh meat; (2) any minced meat or meat preparation; (3) any meat product or other product of animal origin; or (4) food for domestic carnivores: *ibid* reg 2(1).

8 'Foreign origin bovine by-product' means any of the following by-products derived from a bovine animal not slaughtered in the United Kingdom which are liable to enter the human food or animal feed chain or are destined for use in cosmetics or medical or pharmaceutical products: (1) gelatin, di-calcium phosphate, tallow or tallow product not in head (2) *infra*; (2) product derived from tallow by saponification, transesterification or hydrolysis; or (3) amino acid, peptide or collagen: *ibid* reg 2(1).

9 *Ibid* reg 5(1), (2). The conditions are that the goods are prepared in an approved establishment under the supervision of a veterinary inspector, are accompanied by an official certificate, no health marks have been removed and the goods are despatched correctly: see reg 5(1). Any by-products must come from or have passed through an approved establishment, be prepared under the supervision of a veterinary inspector and be correctly labelled: see reg 5(2).

UPDATE

526 Trade prohibitions

TEXT AND NOTES--SI 1999/1103 revoked: SI 2006/1228.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(vi) Trade in Bovine Animals, Embryos, Meat and other Products/527. Production of bovine by-products, consignment of bovine meat and by-products.

527. Production of bovine by-products, consignment of bovine meat and by-products.

The following practices are prohibited:

- 454 (1) the production of gelatin or collagen derived from a bovine animal¹ slaughtered in the United Kingdom² which is liable to enter the human food or animal feed chain, or is destined for use in cosmetics or medical or pharmaceutical products³;
- 455 (2) the consignment or bringing to a registered establishment⁴ of material derived from a bovine animal, including any part of the vertebral column, except in accordance with certain conditions⁵;
- 456 (3) the bringing to any place in Great Britain⁶, or consignment from any place in Great Britain, for the purpose of despatch⁷ from Great Britain to a member state or a third country, of export eligible goods, except in accordance with certain conditions⁸;
- 457 (4) the bringing to any place in Great Britain, or consignment from any place in Great Britain, for the purpose of despatch from Great Britain to a member state or a third country, of fresh meat⁹ which has been despatched from an establishment or a Community approved border inspection post¹⁰ in Northern Ireland or the territory of a member state, except in accordance with certain requirements¹¹;
- 458 (5) the bringing to any approved establishment¹² or consignment from any place in Great Britain to such an establishment of certain products, by-products or material, except in accordance with certain requirements¹³;
- 459 (6) the storing, selling or otherwise supplying, or offering, exposing or advertising for sale or supply, or consigning or despatching to any other person, of specified products or by-products, unless certain requirements are met¹⁴; and
- 460 (7) the placing on the market in Great Britain of any fresh meat, minced meat¹⁵, meat preparation¹⁶, meat product¹⁷ or other product of animal origin¹⁸ which bears, or is labelled or packaged with, an additional mark¹⁹.

1 For the meaning of 'bovine animal' see PARA 526 note 4 ante.

2 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

3 Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 6(1). Such gelatin or collagen derived from a bovine animal not slaughtered in the United Kingdom may not be produced except in accordance with regs 12, 13 (reg 13 amended by SI 1999/1554): Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 6(2).

4 For the requirements relating to registered establishments and their operators see *ibid* regs 7, 8.

5 *Ibid* reg 6(3). The conditions are that: (1) any such material is contained in an impervious container which is clearly labelled to indicate that it contains bovine vertebral column; and (2) any other material derived from a bovine animal carried in the same consignment is contained in a separate impervious container which is clearly labelled as not containing bovine vertebral column: reg 6(3).

6 For the meaning of 'Great Britain' see PARA 206 note 1 ante.

7 For the meaning of 'despatch' see PARA 526 note 1 ante.

8 Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 6(4). The conditions are that the export eligible goods are transported in an officially sealed vehicle the seal of which has not been broken except for the purposes of an official inspection: reg 6(4). 'Export eligible goods' means (1) DBES goods, Export Certified Herds Scheme (ECHS) goods or foreign origin export eligible goods, or (2) any goods containing a mixture of one or more of those types of goods and which contain no ingredient, other than those type of goods, derived from a bovine animal: reg 2(1). For the meanings of 'DBES goods' and 'foreign origin export eligible goods' see PARA 526 notes 6-7 ante. 'Export Certified Herds Scheme (ECHS) goods' means any fresh meat, minced meat, meat preparation, meat product or food for domestic carnivores derived from bovine animals which (a) satisfy the conditions set out in EC Council Decision 98/256 (OJ L113, 15.4.98, p 33) concerning emergency measures to protect against bovine spongiform encephalopathy, Annex II paras 6, 7, and (b) originated in a herd which satisfies the conditions set out in EC Decision 98/256 EC Council Decision 98/256 (OJ L113, 15.4.98, p 33) concerning emergency measures to protect against bovine spongiform encephalopathy, Annex II paras 2-5: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

9 'Fresh meat' has the same meaning as in EC Council Directive 64/433: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

10 'Community approved border inspection post' means any place in a member state which is specified in EC Commission Decision 97/778 Annex: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

11 Ibid reg 6(5). The requirements are that: (1) it is accompanied by a veterinary certificate issued by an official veterinarian or a certificate issued by the competent authority in respect of any border inspection post; and (2) it is transported in an officially sealed vehicle the seal of which has not been broken except for the purposes of an official inspection: reg 6(5).

12 For the requirements relating to approved establishments and their operators see ibid regs 10, 11, Schs 1, 2.

13 Ibid reg 6(6). The requirements are that the establishment and member state where it was produced are clearly indicated, either by means of a label affixed to it or on its packaging or in a document accompanying it: reg 6(6). The specified products, by-products and material are any of the following products which are derived from bovine animals which have not been slaughtered in the United Kingdom: (1) any gelatin, di-calcium phosphate, tallow, product derived from tallow by saponification, transesterification or hydrolysis, any other tallow product, or any amino acid, peptide or collagen, which is liable to enter the human food or animal feed chain or is destined for use in cosmetics or medical or pharmaceutical products; and (2) any raw materials for use in the production of any such products: reg 6(7).

14 Ibid reg 6(8). The requirements are that (1) the establishment at which that product or by-product was produced; and (2) the unsuitability of that product or by-product for use in human food, animal feed, cosmetics or medical or pharmaceutical products, is clearly indicated, either by means of a label affixed to the product or by-product or on its packaging or in a document accompanying it: reg 6(8). The specified products or by-products are any gelatin, di-calcium phosphate, collagen, tallow, products derived from tallow by saponification, transesterification or hydrolysis or any other tallow products, produced, otherwise than for human food, animal feed, cosmetics or medical or pharmaceutical products, from raw materials derived from bovine animals slaughtered in the United Kingdom: reg 6(9).

15 'Minced meat' has the same meaning as in EC Council Directive 94/65 (OJ L368, 31.12.94, p 10) laying down the requirements for the production and placing on the market of minced meat and meat preparations: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

16 'Meat preparation' has the same meaning as in EC Council Directive 94/65 (OJ L368, 31.12.94, p 10) laying down the requirements for the production and placing on the market of minced meat and meat preparations: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

17 'Meat product' has the same meaning as in EC Council Directive 77/99 (OJ L26, 31.1.77, p 85) on health problems affecting intra-Community trade in meat products (as amended): Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

18 'Other product of animal origin' has the same meaning as in EC Council Directive 77/99 (OJ L26, 31.1.77, p 85) on health problems affecting intra-Community trade in meat products (as amended): Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1).

19 Ibid reg 6(10). Additional marks are marks applied to goods for despatch abroad: see reg 2(1), Schs 4, 5.

UPDATE

527 Production of bovine by-products, consignment of bovine meat and by-products

TEXT AND NOTES--SI 1999/1103 revoked: SI 2006/1228.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(vi) Trade in Bovine Animals, Embryos, Meat and other Products/528. Use of controlled bovine by-products.

528. Use of controlled bovine by-products.

The use of controlled bovine by-products¹ or gelatin or collagen derived from a bovine animal, whether slaughtered in the United Kingdom² or elsewhere, which has been produced in the United Kingdom in the production of products liable to enter the human food or animal feed chains or destined for use in cosmetics, medical or pharmaceutical products is prohibited³.

1 For the meaning of 'controlled bovine by-product' see PARA 526 note 6 ante.

2 For the meaning of 'United Kingdom' see PARA 206 note 1 ante.

3 Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 9(1). This prohibition does not apply to the use of: (1) a controlled bovine by-product produced in a registered establishment; and (2) gelatin and collagen produced in an approved establishment: reg 9(2), (3). The use of any premises for the production of any type of controlled bovine by-product is controlled and such premises must be registered: see reg 7. Requirements are imposed on the operator of a registered establishment: see reg 8. For the requirements relating to approved establishments and their operators see regs 12, 13, Schs 2, 3 (reg 13 amended by SI 1999/1554).

UPDATE

528 Use of controlled bovine by-products

TEXT AND NOTES--SI 1999/1103 revoked: SI 2006/1228.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(9) SPECIFIED RISK MATERIAL/(vi) Trade in Bovine Animals, Embryos, Meat and other Products/529. Administration and enforcement.

529. Administration and enforcement.

Provision is made for the Minister¹ or the Food Standards Agency, on behalf of the Minister, to charge fees in relation to his administrative functions under the regulations².

Provision is made for an officer commissioned by the Commissioners of Customs and Excise Customs or an inspector³ to search, and stop and search vehicles and vessels⁴. An inspector may enter premises⁵, seize goods⁶, destroy a consignment of goods where there is a risk of them being dealt with illegally⁷, take samples and make other checks and examinations⁸. An officer may detain vehicles and vessels⁹, and an inspector may impose suspension notices and orders¹⁰. It is an offence to obstruct or fail to assist any person acting in the execution of the regulations¹¹.

A person contravening or failing to comply with the regulations, is guilty of an offence¹².

The regulations must be enforced and executed by the Minister and the local authority¹³, although the Minister may direct, in relation to cases of a particular description or any particular case, that the duty imposed on a local authority is to be discharged by the Minister and not by the local authority¹⁴.

1 Ie the Minister of Agriculture, Fisheries and Food in relation to England, and the Secretary of State in relation to Wales: Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103, reg 2(1). As to the Minister of Agriculture, Fisheries and Food see PARA 224 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437. As to the Secretary of State see PARA 224 ante.

2 Ibid reg 14 (amended by SI 2000/656). As to the establishment of the Food Standards Agency see PARA 225 ante.

3 'Inspector' means (1) a person appointed as such by the Minister, including a veterinary inspector; or (2) a person appointed by a local authority in relation to its enforcement obligations under the Bovines and Bovine Products (Trade) Regulations 1999, SI 1999/1103: reg 2(1).

4 Ibid reg 15.

5 Ibid reg 16.

6 Ibid reg 17.

7 Ibid reg 17.

8 Ibid reg 18.

9 Ibid reg 19.

10 Ibid reg 20.

11 Ibid reg 21.

12 Ibid reg 22. Any person guilty of such an offence is liable: (1) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: reg 21. As to the statutory maximum see PARA 261 note 22 ante. Where the commission by any person of an offence under any of the provisions of the regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person: reg 23(1). In any proceedings for an offence under any of the provisions of the regulations, it is a defence for the person charged to prove that he took all

reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control: reg 23(2). If in any case the defence involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged is not, without leave of the court, entitled to rely on that defence unless: (a) at least seven clear days before the hearing; and (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession: reg 23(3). Any reference to appearing before a court is to be construed as including a reference to being brought before a court: reg 23(4).

13 Ibid reg 24(1).

14 Ibid reg 24(2).

UPDATE

529 Administration and enforcement

TEXT AND NOTES--SI 1999/1103 revoked: SI 2006/1228.

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(10) SLAUGHTER OF POULTRY/530. Licensing slaughterhouses for birds or rabbits.

(10) SLAUGHTER OF POULTRY

530. Licensing slaughterhouses for birds or rabbits.

No person may carry on the business of a slaughterhouse¹ or cutting premises² unless the premises concerned are licensed for the business concerned by the Food Standards Agency³ and that person complies with any conditions to which the licence is subject⁴. The occupier of licensed premises must also keep records and ensure that his staff comply with hygiene requirements⁵.

Applications for licences must be made to the Food Standards Agency⁶. Licences may be revoked⁷ or suspended⁸, and appeals may be made against the refusal of a licence to a meat hygiene appeals tribunal⁹.

The Food Standards Agency may designate official veterinary surgeons and inspectors to supervise premises and provision is made in relation to their powers¹⁰. Certain persons may also be authorised as plant inspection assistants¹¹. The Agency must arrange for certain health inspections to be carried out and for the application of the health mark to all fresh meat which has been passed as fit for human consumption¹², and records of those inspections must be kept¹³. Producers have certain duties to enable the official veterinary surgeons and inspectors to carry out their functions¹⁴. An official veterinary surgeon or inspector may impose certain prohibitions and conditions on the slaughter for human consumption of any bird or rabbit in licensed premises¹⁵.

Obligations are imposed in relation to notification of the operation of licensed premises¹⁶ and to the documentation necessary when transporting fresh meat¹⁷. Conditions are set down in relation to the marketing of fresh meat for human consumption and, subject to specified exceptions, the sale of such meat is prohibited unless those conditions are complied with¹⁸. Any contravention of the provisions is an offence and penalties are imposed accordingly¹⁹.

The regulations must be executed and enforced: (1) in relation to licensed premises by the Food Standards Agency; and (2) in relation to any place other than licensed premises by the food authority within whose area that place is situated²⁰.

1 'Slaughterhouse' means any building, premises or place for slaughtering birds or rabbits, the flesh of which is intended for sale for human consumption, and includes any place available in connection therewith for the confinement of birds or rabbits awaiting slaughter there: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 2(1). 'Birds' means poultry (ie domestic fowls, turkeys, guinea fowls, ducks and geese) or farmed game birds (ie birds, including ratites, but excluding poultry, which are not generally considered domestic but which are bred, reared and slaughtered in captivity): reg 2(1).

2 'Cutting premises' means premises used for the purpose of cutting up fresh meat intended for sale for human consumption: *ibid* reg 2(1). 'Cutting up' means cutting carcasses into smaller cuts or removing bones from carcasses or parts of carcasses: reg 2(1). 'Meat' means all parts of a bird or rabbit which are fit for human consumption: reg 2(1).

3 As to the establishment of the Food Standards Agency see PARA 225 ante.

4 Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 4(1)(a), (b) (reg 4(1) substituted by SI 2000/225; and amended by SI 2000/656). As to exempted premises see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, regs 3, 3A (reg 3 amended by SI 2000/225; and SI 2000/656; Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 3A added by SI 2000/225). Subject to certain exceptions, licensed slaughterhouses may not be used for the slaughter of a bird

or rabbit not intended for sale or human consumption: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 7.

5 See *ibid* reg 18 (amended by SI 2000/225; and SI 2000/656).

6 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 4(1)(c), (2) (reg 4(1)(c) as substituted: see note 4 *supra*; reg 4(1)(c), (2) amended by SI 2000/656). Applications are to be made in writing by the occupier who will be notified of the Food Standard Agency's decision in writing: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 4(3), (4) (amended by SI 2000/656). Licences may be granted subject to conditions: see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 4(5)-(8) (reg 4(6)-(8) amended by SI 2000/656). Any change in control of the licensed premises must be notified to the Food Standards Agency: see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 4A (added by SI 2000/225; and amended by SI 2000/656).

7 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 5 (amended by SI 2000/225; and SI 2000/656). Notification of revocation must state the right to appeal: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 5(3).

8 See *ibid* reg 5A (added by SI 2000/225; and amended by SI 2000/656).

9 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 6 (amended by SI 2000/225; and SI 2000/656), which provides that appeals may also be made against conditions imposed on the grant of licences and revocations. As to the constitution of the meat hygiene appeals tribunal see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 6(2), Sch 15; and *PARA* 339 *ante*.

10 See *ibid* regs 8-10 (regs 8-10 amended by SI 2000/225; Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, regs 8, 9 amended by SI 2000/656).

11 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 11 (amended by SI 2000/656).

12 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 12 (amended by SI 2000/656). As to requirements for inspections see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Schs 7, 9 (Sch 7 amended by SI 2000/656; Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Sch 9 amended by SI 1997/1729). As to the charges for inspections see the Meat (Hygiene and Inspection) (Charges) Regulations 1998, SI 1998/2095 (as amended).

13 Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 17 (amended by SI 2000/656). Where any inspection reveals a transmissible disease, specified persons must be notified: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 17(1).

14 See *ibid* reg 19.

15 See *ibid* reg 16 (amended by SI 2000/656). As to the welfare and humane treatment of birds and rabbits awaiting slaughter see the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731; and *PARA* 489 *et seq ante*.

16 See the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 13.

17 See *ibid* reg 15.

18 See *ibid* reg 14 (amended by SI 2000/225). As to conditions to be imposed see the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Schs 7-9, 11-14 (as amended).

19 See *ibid* reg 20 (amended by SI 1995/2148, SI 1995/3205, SI 2000/225, and SI 2000/656). Any person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 20 (as so amended).

20 Ibid reg 23(1) (substituted by SI 2000/225; and amended by SI 2000/656). 'Food authority' does not include: (1) the council of a non-metropolitan county in England and Wales; or (2) the appropriate Treasurer referred to in the Food Safety Act 1995 s 5(1)(c) (which deals with the Inner Temple and the Middle Temple) (see PARA 251 ante): Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 23(3). On an inspection of any meat in licensed premises an authorised officer of the Food Standards Agency may certify that the meat concerned has not been produced, stored or transported in accordance with the regulations: reg 23(4) (reg 23(4)-(6) added by SI 2000/225; Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 23(4) amended by SI 2000/656). On an inspection of any meat at any place other than licensed premises an authorised officer of the food authority within whose area that place is situated may certify that the meat concerned has not been produced, stored or transported in accordance with the regulations: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 23(5) (as so added). Where any meat is so certified it must be treated for the purposes of the Food Safety Act 1990 s 9 (see PARA 284 ante) as failing to comply with food safety requirements: Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 23(6) (as so added).

UPDATE

530-600 Slaughter of Poultry

SI 1995/540 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.

530 Licensing slaughterhouses for birds or rabbits

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 12--SI 1998/2095 revoked: SI 2005/2983 (England); SI 2005/3370 (Wales). See now the Meat (Official Controls Charges) (England) Regulations 2009, SI 2009/1574, and the Meat (Official Controls Charges) (Wales) Regulations 2009, SI 2009/1557 (amended by SI 2010/1360).

Halsbury's Laws of England/FOOD (VOLUME 18(2) (REISSUE))/8. SLAUGHTERHOUSES/(10) SLAUGHTER OF POULTRY/531-600. Sale of poultry and rabbit meat.

531-600. Sale of poultry and rabbit meat.

Subject to certain exceptions¹ no person may at any time sell for human consumption any fresh meat² from a bird or rabbit unless:

- 461 (1) all operations required³ in relation to that meat have been carried out⁴;
- 462 (2) it comes from a bird or rabbit which has been subjected to a pre-slaughter health inspection⁵, has been passed as fit for slaughter for human consumption and has been subsequently slaughtered⁶;
- 463 (3) it has been chilled and prepared under hygienic conditions⁷;
- 464 (4) it comes from the body of a bird or rabbit which has been subjected to a post-mortem health inspection⁸ and which has shown no evidence of disease or other abnormal condition except for localised lesions or contamination which have been removed and which do not render the remainder of the carcase unfit for human consumption⁹;
- 465 (5) it has been given a health mark¹⁰;
- 466 (6) it is accompanied during transportation either by a health certificate or by an invoice or delivery note¹¹;
- 467 (7) if it has been stored in any licensed premises, it has been stored in accordance with the relevant requirements¹²;
- 468 (8) if it is wrapped or packaged, it has been wrapped or packaged under hygienic conditions¹³; and
- 469 (9) if it has been transported to, or from, any licensed premises, it has been transported under hygienic conditions¹⁴.

No person may sell for human consumption:

- 470 (a) fresh meat which has been treated with an antibiotic or tenderiser, or has been marked with an unauthorised colourant, or has been treated with an unauthorised preservative or has been insufficiently cooled by an immersion process immediately after evisceration and post mortem health inspection¹⁵;
- 471 (b) poultry meat which has not been eviscerated or has been obtained from the body of any bird which has not been eviscerated¹⁶; or
- 472 (c) rabbit meat or farmed game meat which has been treated with ionizing or ultra-violet radiation¹⁷.

The above provisions do not apply to fresh meat imported from a relevant EEA State¹⁸ or a third country, but such imported fresh meat must be handled and transported in accordance with the regulations¹⁹. The provisions also do not apply in relation to the transportation of any fresh meat from any licensed premises, on sale, direct to the final consumer or to a retailer in Great Britain²⁰.

There are also restrictions on the consignment or sale of fresh meat for human consumption to a relevant EEA State²¹, but they do not apply to meat forming part of travellers' luggage and not intended for resale, or to meat sent as small packages to private persons²².

1 See the text and notes 19-20 infra.

- 2 For the meaning of 'meat' see PARA 530 note 2 ante.
- 3 le required under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540: see PARA 530 ante.
- 4 Ibid reg 14(1)(a) (substituted by SI 2000/225).
- 5 Pre-slaughter health inspections are carried out in accordance with the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, Sch 7 (amended by SI 2000/656).
- 6 Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 14(1)(b).
- 7 Ibid reg 14(1)(c). Such conditions are prescribed by Sch 8.
- 8 Post mortem health inspections are carried out in accordance with ibid Sch 9.
- 9 Ibid reg 14(1)(d).
- 10 Ibid reg 14(1)(e). Health marks are applied in accordance with Sch 11 (amended by SI 2000/656).
- 11 Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, SI 1995/540, reg 14(1)(f). As to such transport documentation see reg 15.
- 12 Ibid reg 14(1)(g). The requirements for storage are contained in Sch 12.
- 13 Ibid reg 14(1)(h). Such conditions are prescribed by Sch 13.
- 14 Ibid reg 14(1)(i). Such conditions are prescribed by Sch 14.
- 15 Ibid reg 14(2)(a).
- 16 Ibid reg 14(2)(b).
- 17 Ibid reg 14(2)(c).
- 18 'Relevant EEA State' means an EEA State other than Iceland: ibid reg 2(1).
- 19 Ibid reg 14(5).
- 20 See ibid reg 14(6). For the meaning of 'Great Britain' see PARA 206 note 1 ante.
- 21 Ibid reg 14(3).
- 22 Ibid reg 14(4).

UPDATE

530-600 Slaughter of Poultry

SI 1995/540 revoked: SI 2005/2059 (England), SI 2005/3292 (Wales). For new provision in relation to food hygiene, see the Food Hygiene (England) Regulations 2006, SI 2006/14 (amended by SI 2007/56); the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and PARA 293A.